

SENATE—Wednesday, December 4, 1985

(Legislative day of Monday, December 2, 1985)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Eternal Father, God of order, justice, and truth, we pray for the infusion of this place with Thy presence and Thy gracious intervention in the monumental task the Senators face before adjournment. Continuing resolution, reconciliation, farm bill, tax bill, deficit reduction—any one of which is overwhelming—added together with all the other legislation and executive business, makes adjournment in any reasonable time seem impossible. But Thou art the God of the impossible and I pray that Thou wilt give special wisdom to leadership and guidance to all the Senators and their staffs that this imponderable agenda may be efficiently and effectively managed to a just completion to the glory of God, the honor of the Senate, and the benefit of the Nation. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each, followed by a routine morning business not to extend beyond the hour of 10 a.m.

At 10 a.m., by unanimous consent, the Senate will go into executive session and resume consideration of the Dawson nomination under a time agreement of 1 hour. The yeas and nays are ordered on the nomination, therefore a rollcall vote will occur at about 11 a.m., with an hour time agreement. So, at 11 a.m., we probably will have a vote.

Following the confirmation vote, we hope to have a time agreement on S. 1396, White Earth Indian Reservation, and S. 259, sports franchise, if we can reach a time agreement, and Executive Calendar judges. There are a number of judges being held without any good reason. We would either like to figure out some way to move all those judges or at least to start taking them up,

starting with former Senator Buckley, who I think is highly qualified and should be confirmed, should have been confirmed, but is still on the calendar, and a number of other outstanding nominees awaiting confirmation by the Senate. We hope we can dispose of those this week.

Then we have the Conrail legislation, Genocide Convention, and a balanced budget amendment. We probably will not finish all those today.

I reserve the remainder of my time.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDING OFFICER (Mr. GORTON). The acting minority leader is recognized.

WHY THE SENATE SHOULD NOT GO ON TV

Mr. PROXMIRE. Mr. President, for some mysterious reason the Senate proceedings here in this Chamber will go on television sometime shortly after the first of the year. Of all the mistakes the U.S. Senate has made over the years, this will have to be the dumbest.

Do not get me wrong. I love this place. I have been a Senator for 28 years and I fully enjoy every minute of it. Being a U.S. Senator in 1985 is, without a doubt, the best job on Earth. I would not trade it for Ronald Reagan's job, or Johnny Carson's, or sole ownership of the Chicago Bears, or publisher of the New York Times, or a billion-dollar fortune, or all of the above. You can make whatever you want to make out of being a Senator. You are your own boss. You have access to the most complete information available on any subject. You have a voice every day in the course this country takes. And, because the United States is the most productive, the richest, and the most powerful country on Earth, as a Senator you can contribute to a more peaceful, and more fulfilling, and happier world. And you can hire a staff to help make your voice more effective.

So what is wrong with the Senate going on television? What is wrong with bringing the country in on the deliberations of this remarkable seat of national power? Why not let the country watch how the Senate wields its power? After all, only the Senate can confirm or deny the appointment of the men and women who together with the President run the country.

Only the Senate can ratify or refuse to ratify the treaties that restrain nuclear arms. Along with the House, the Senate determines the level of taxes the American people pay, the hundreds of billions of dollars of those taxes poured into the manning and production of the planes, tanks, ships, and missiles that protect our country. The Senate debates and determines the measures to preserve the quality of water the American people drink, the air we breathe. We regulate labor, commerce, financial institutions. We establish the laws that govern our courts. So why shouldn't the public watch the Senate at work on the floor of this Chamber?

The answer, Mr. President, is that proceedings on the floor of the Senate just have to be the dullest game in town. The Senate is like a small, weak, uncoordinated young man who wants to play professional football. He has superclout because his father owns an NFL football team. He has a genius IQ. He writes like a dream. He has character. He is decisive. He would make a fine executive or judge or legislator. So what does he do? He decides to play professional football on his dad's team. The coach has to welcome him. After all the young man's father owns the team. It is pathetic.

He will become the butt of ridicule and cruel jokes. The Senate, Mr. President, is that weak, small, uncoordinated man. And television, believe me, is a game, a sporting contest. It is a vaudeville act. It is entertainment. From early morning to late at night it is entertainment. Now the Senate, as I have said, is lots of things. I love it dearly. But entertainment it is not.

Just look at this body. Out of every 8 hours the Senate is in session, we spend, as Senator PRYOR pointed out recently, most of our time in quorum calls, extended often meaningless rollcalls, long speeches for the RECORD—such as I am making right now—explanations by the two leaders of how we will spend the next day or two, and over-and-over-again recriminations for our lack of progress. There are many days when the liveliest act the Senate puts on is a quorum call with the clerk waiting for long intervals between calling names. And from the quorum calls, things really go downhill. That is sometimes the highlight of the day.

The floor of the Senate typically is peopled by one Senator—such as right now—who is speaking, and from two to five others who are paying no atten-

tion—at the present time, there is one Senator, the Presiding Officer, but there is no other Senator that I can see on the floor, and this is fairly typical—to the Senator who is addressing an empty or nearly empty Chamber. Three or four doorkeepers and a handful of staffers lurk in the background. The professionals who record and referee the proceedings sit quietly in place. All these people are in the Senate Chamber day after day for one reason. They are paid to be here.

Now consider this. Several hundred reporters make their living by reporting the activities of the Congress to the American people. They are accredited to the gallery where they can watch and report the proceedings on the floor. That is what they are paid to do. How many show up?

Look in the Senate Press Gallery now. We have two, and we have a third reporter coming in the gallery at the moment. And that is about typical. Usually at any one time, from three to five. Not 300 to 500, just 3 or 4 or 5. The attendance of 15 or 20 reporters in the Senate gallery represents an unusual turnout. So not even those who are paid to cover the Senate can stand the incredible boredom of watching this place in action. Senator PRYOR recently said that being in the Senate Chamber is like spending your whole life sitting in an airport waiting for a plane that never comes.

So what happens when the Senate goes on television? We are like the brilliant but small uncoordinated young man who wants to play professional football. We bomb. We provide lots of material for comedy writers. We become a national joke. This will not be a rerun of "It Pays To Be Ignorant." Senators are not ignorant. They are generally informed and intelligent. They understand the issues. Why isn't this enough? Answer: The public has proven over and over again that it does not mind top officials who lack intelligence or understanding. It can forgive those shortcomings. But it cannot forgive being bored. Unfortunately, boring is what the Senate is best at. Sure, some television is bad. But have you ever seen any TV show as dull as a quorum call? So let us keep this little uncoordinated man, the Senate, out of professional football or TV. TV does not need the Senate. The Senate does not need TV.

AFTER THE WARM GLOW FROM THE SUMMIT, THE ARMS RACE SPEEDS ON

Mr. PROXMIRE. Mr. President, in the warm aftermath of the Geneva summit meeting, all of us are gratified that the two superpower leaders have had long, get-acquainted talks. We are glad that they plan to meet again next year in this country and in 1987 in Russia. This Senator welcomes the

opening of an American consulate office in Kiev and a Russian consulate in New York. It is good to know that both superpowers will expand cultural visits to the other.

At the same time we cannot ignore the hard, cold, continued build up on both sides of billions of dollars worth of deadly weapons of war. That build up goes on without missing a beat. It will continue on for years to come. The end is nowhere in sight. Why do the Russians continue this military build up? Why does the United States? Each pours painfully limited resources into increasing military power for one reason: fear and hostility against the other.

Marshal Shulman is director of the Columbia University Institute for Advanced Studies of the Soviet Union. He is a thoughtful expert. He fully recognizes the military threat represented by the Soviet Union. Shulman said at the close of the summit:

One can only be pleased that the tone of the conversations was good and it may be that this will have intangible benefits for the future.

And then Shulman added:

But we have to be concerned that both countries are approaching deployment of new ballistic missiles, new submarines, new cruise missiles and new bombers, and as these come along they will inevitably be part of a tension begetting process.

Mr. President, the images of President Reagan and Secretary Gorbachev, clasping hands in friendship, smiling, and laughing together, warm our hearts. The vision of these two superpower leaders talking with each other alone—except for interpreters—for 5 hours in the 2-day summit span strengthens our hopes for a future that can clearly mark the beginning of the end of the arms race. It is very hard, however, to resist the temptation to be realistic, if not cynical. Secretary Gorbachev must have had the people of Russia at his feet when he appeared for 45 minutes right after the summit meeting on Soviet television telling the Soviet people his version of this long conference with President Reagan. President Reagan as usual was masterful in his address to Congress a few hours after the summit had been completed. The President told us:

There can be no greater good than the question of peace, nor no finer purpose than the preservation of freedom.

Who can argue with that? And yet the arms race rampages on. There is not the slightest chance there will be any let up in the steady, mutual build up of military power. Was Secretary Weinberger the real victor at this summit? Weinberger warned the President in a letter that became public on the eve of the summit. Weinberger told the President not to make any agreement that would compromise the strategic defense initiative. That is

SDI or star wars buildup. There is universal agreement that Weinberger succeeded in this appeal. SDI was not compromised in the slightest.

The President will, in all likelihood continue to push ahead all the way with a star wars program that will increase by a startling 100 percent in this fiscal year, and continue to compound spending increases in subsequent years. Star wars has real momentum now. What does that do to the much discussed reduction of nuclear weapons on both sides by 50 percent? Continued explosive star wars funding makes the reduction of nuclear missiles by the Soviet Union an impossible dream. The restraining SALT II Treaty expires on January 1. Less than 4 short weeks from now. In fact, star wars will almost certainly provoke a prompt and big increase in Soviet nuclear power—one obvious way to counter star wars is to build more offensive nuclear weapons.

The present Soviet arsenal of 10,000 could cascade to 20,000 or 50,000. At any rate, the Soviets will certainly pour resources into building up other nuclear weapons like their submarine launched cruise missiles to counter a United States star wars defense. The cruise missile hugs the ground. It will fly under any conceivable star wars net. The Soviet Union has already started its cruise missile buildup. That will certainly accelerate.

But that is only part of the consequence of our persistence with SDI. Anyone who believes that the Soviet Union will meekly surrender its hard earned superpower status may believe the summit has put this country on the road to effective arms control. If you believe that, you may also believe that the Soviets will ignore the SDI developments, and agree with us to reduce their nuclear arsenal by 50 percent. You will believe that the heavy burden of the arms race will wane. You will believe the superpowers have started down the long road to a positive, cooperative relationship. Some day that could happen. It will not happen as long as the President of the United States insists on proceeding with star wars.

NAZI WAR CRIMINAL BRAGS OF CLEAR CONSCIENCE

Mr. PROXMIRE. Mr. President, the horrible memory of the Holocaust is burned into the conscience of humanity. For much of mankind, there exists an awful sense of remorse for the monstrous acts of which we know man is capable.

But not all of humanity can subscribe to the feelings of sorrow for the senseless murder of millions. In fact, some ignore the dark events of the Holocaust that taint the conscience of

most. Alois Brunner, a long-hunted Nazi war criminal, is one of those men.

On October 28, in the German weekly magazine *Bunte*, Alois Brunner is quoted as saying he had "no bad conscience" for his role in the killings of thousands of European Jews. Brunner is held responsible for sending more than 120,000 Austrian, German, French, Slovak, and Greek Jews to Nazi death camps. The magazine reported that Brunner has been living in Syria for 30 years.

In Syria, Brunner has eluded the grasp of justice for decades. He has escaped efforts to extradite him and thwarted capture by present-day Nazi hunters. He mockingly suggests that he is willing to appear before an international tribunal and brags that "Israel will never get me." Brunner tells reporters, "I will not be a second Eichmann."

The pain nurtured by decades of sorrow since the Holocaust cannot penetrate the souls of men like Alois Brunner. But there can be a message sent to reassure the rest of the world proclaiming that the memory of the Holocaust will not be brushed aside. Ratification of the Genocide Convention will send this message around the globe. The joining of this Nation with the scores of others who have already signed the Genocide Convention will strengthen the international commitment to end all acts of genocide and further the challenge of world peace.

President Reagan again has urged the Senate to give its advice and consent to the Convention. Many of my colleagues have asked that it be quickly brought to the floor for a vote. And daily I ask that we bring up the Genocide Convention for consideration as we promised last session.

Again, I ask that before the close of this session, we vote to ratify the Genocide Convention.

MYTH OF THE DAY

Mr. PROXMIER. Mr. President, the myth of the day is that our economic expansion is only pausing to catch its breath and that we can expect robust growth again—starting tomorrow. The administration will soon issue its economic forecast for 1986 and 1987. I predict that they will swallow this myth hook, line, and sinker.

To be fair, the data on economic performance do not seem to presage a recession. Those traditional harbingers of a downturn—large inventories and rising interest rates—are absent.

Yet this Senator is concerned and here is why:

The Nation's farm economy is in a depression—no other word for it. No relief is in sight. This situation raises the specter of the 1920's, when the farm economy dropped as a prelude to the Great Depression.

The consumer, who has been the source of the recovery, is pulling in his horns. Consumer savings, as a percent of income, are lower than they have ever been. Consumer debt is at a historic high and consumer spending is slowing as a result.

Output from the Nation's factories, mines, and utilities has increased just 1.8 percent over last year. This anemic performance means that investment, another source of rapid growth, is likely to be lackluster next year, at best.

In addition, this expansion is aging fast. The average recovery since World War II has lasted between 3 and 4 years. Ours has now lasted 3 years and will be 4 years old next November.

Adding these factors together, this Senator believes that the odds for a resurgence of growth next year are about the same as for a sharp recession—say 1 out of 5. The most likely outcome is for the economy to continue muddling along, with growth about 20 percent below average, for another year.

Why then do I believe that the administration will buy an economic long shot and predict a return to rapid growth? By doing so, they will try to postpone dealing with the deficit. By predicting such growth, they will be able to reduce the deficit by a hefty \$20 to \$30 billion without eliminating a single popular program or raising any revenue. They will continue dwelling in that never-never land where defense spending is untouchable and more revenues are unmentionable.

And as long as they hold to this myth, the chances of a sharp recession will increase. That is no myth.

RESERVATION OF MINORITY LEADER'S TIME

Mr. PROXMIER. Mr. President, I ask unanimous consent that the remaining time of the Democratic leader be reserved for his use later in the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 10 a.m., with statements limited therein to 5 minutes each.

ACID RAIN: THE SCIENTIFIC CASE FOR CONTROLS

Mr. LEAHY. Mr. President, I ask unanimous consent to have printed in the CONGRESSIONAL RECORD today some excellent materials on the effects of acid rain, which were prepared by the National Clean Air Coalition.

This memorandum, and the attached articles, make a strong case for action on acid rain now.

I commend these materials to my colleagues.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL CLEAN AIR COALITION

To: Members of Congress.

From: Richard E. Ayres, Chairman.

Subject: Acid Rain: The Scientific Case for Controls.

Several studies issued in recent months add urgency to the call for controls on the pollution that causes acid rain. The reports provide compelling new evidence of the nature of the acid rain problem and the extent and severity of the damages it is causing to natural and manmade resources.

1. *Materials Damage Assessment*: A draft study prepared by EPA, Brookhaven National Laboratory and the Army Corps of Engineers suggests that an acid rain control program might pay for itself in reduced damage to building materials alone. It also shows that the damage is substantial in the Midwest. The study gave a preliminary midpoint estimate of \$3.5 billion for damage caused by acid rain to buildings and estimated that these damages could run as high as \$6 billion per year. The attached table from the study shows total materials damage to paint, zinc, stone and mortar for cities in the 17 state region examined.

According to the study, damages from regional pollution represent a large fraction of the total damages. The study authors caution that the estimates are probably biased on the low side because they do not take into account the cost of substituting more pollutant-resistant materials, aesthetic losses, and damages to materials such as automobile paints, roofing composites, and concrete. The study also shows that damages to statues, historical monuments, and buildings are substantial, though these costs are not included in the city-by-city totals.

2. *Experimental Lake Acidification Study*: In June, Science magazine published a paper by Dr. David Schindler, et al. reporting on the results of an experimental lakes acidification study. Schindler was the Chairman of the National Academy of Sciences committee that produced the 1981 landmark study of acid rain. In this article, Schindler and his colleagues reported on the different stages of biological damage that occur with the destruction of an ecosystem by acidification. At pH 5.93, a higher pH level associated with a much lower level of acidity than was earlier believed to cause damage, key organisms in the food chain of the lake trout such as minnows and shrimp failed to reproduce. At pH 5.64, thick mats of filamentous algae overgrew the trout's spawning grounds. By pH 5.59, the minnows had disappeared completely, crayfish egg masses became infested with a fungal parasite, and lake trout failed to rear any young to maturity. The ecosystem was collapsing. The authors concluded:

Some of the changes occurred much earlier in the acidification process (that is, at higher pH) than is commonly believed to cause ecosystem degradation. This suggests that early ecological damage from lake acidification may be more extensive than was previously believed, a result that should be of vital interest to agencies regulating the emission of acid precursors.

3. *Eastern Lakes Survey:* In August, EPA released the preliminary results of its eastern lakes survey. While the EPA press office attempted to downplay the significance of the survey, the results showed some startling new signs of damage. In New England, the upper Midwest, Appalachia and Florida, 60 percent, 41 percent, 36 percent and 54 percent of the lakes respectively are highly sensitive to acid rain damage. More than 4,000 lakes are at the crisis stage—they have practically no buffering capacity left to withstand the onslaught of acids from the sky. EPA estimated that close to a thousand lakes in the East have already succumbed to acid rain. A surprisingly high number of acidified lakes were found in Florida. The majority of these Florida lakes are "clear water" lakes that have no sources of natural organic acids.

EPA's estimates are low for two reasons. First, the survey did not include lakes smaller than four acres in size. These small water bodies are known to be particularly vulnerable to acid rain damage and they number in the thousands. Second, the EPA survey used pH 5.0 as the cutoff to indicate biological damage, while the Schindler study cited above clearly found serious effects at much higher pH levels.

4. *Acid Deposition, Smelter Emissions and the Linearity Issue in the Western United States:* A study by the Environmental Defense Fund published in Science magazine in August provides direct evidence of the proportionate relationship between emissions of acid rain-causing pollution and deposition of acids downwind. The researchers tracked changes in western smelter emissions of sulfur dioxide (due to fluctuations in copper production) and correlated them with changes in the sulfate concentration of rainfall at remote sites. The study confirmed a linear, or 1:1 relationship between emissions and deposition, and demonstrated the long distance transport of sulfur compounds over distances exceeding 1,000 kilometers (600 miles). The study validates the adage that "what goes up must come down" and demonstrates that pollution reductions will result in directly proportionate reductions in acid rain.

KEY TABLE FROM EPA'S DRAFT MATERIALS DAMAGE ASSESSMENT

TABLE 3.5-15.—EXTRAPOLATED DAMAGE ESTIMATES FOR 117 MSA'S IN NORTHEAST

City	Annual damages \$10*					Per Capita
	Material		Pollution		Total damages	
	Paint	Other *	Local	Re-gional		
CONNECTICUT						
Bridgeport.....	10.1	1.5	2.5	9.1	11.6	29.25
Danbury.....	3.0	.3	.2	3.1	3.3	22.66
Hartford, New Britain, Bristol, Meriden.....	23.4	4.2	1.8	25.9	27.7	29.94
New Haven.....	9.1	1.4	1.1	9.4	10.5	20.98
New London.....	5.7	.6	.4	5.9	6.3	25.64
Norwalk.....	3.0	.3	.4	2.9	3.3	25.79
Stamford.....	4.5	.6	.6	4.5	5.1	25.40
Waterbury.....	4.4	.6	.3	4.7	5.0	21.97
DELAWARE						
Wilmington.....	11.8	3.8			15.6	29.90
ILLINOIS						
Champaign, Urbana.....	3.3	.7	.3	2.7	4.0	23.89
Decatur.....	3.1	.5	.6	3.0	3.6	27.25
Chicago, Kankakee.....	10.2	1.9	2.6	9.5	12.1	25.01
Peoria, Bloomington.....	3.9	.7			4.6	16.61
Rockford.....	7.0	1.4	3.3	5.1	8.4	21.82
Rock Island.....						
Springfield.....	5.3	.9	2.1	4.1	6.2	33.08
INDIANA						
Bloomington.....	2.6	.6	.9	2.3	3.2	31.98

TABLE 3.5-15.—EXTRAPOLATED DAMAGE ESTIMATES FOR 117 MSA'S IN NORTHEAST—Continued

City	Annual damages \$10*					Per Capita
	Material		Pollution		Total damages	
	Paint	Other *	Local	Re-gional		
Elkhart	3.0	.6	.1	3.5	3.6	26.00
Evansville	7.7	1.9	.3	8.9	9.2	23.90
Fort Wayne	23.5	4.8	13.1	15.2	28.3	44.02
Gary and Hammond	47.8	10.4	10.2	48.0	58.2	44.55
Indianapolis	2.5	.4	.1	2.8	2.9	27.65
Kokomo	3.2	.8	1.5	2.5	4.0	32.80
Lafayette	3.1	.5	1.1	2.5	3.6	28.25
Muncie	7.1	1.3	1.0	7.5	8.5	30.12
South Bend	5.7	.9	1.8	4.8	6.6	37.42
Terre Haute						
Kentucky						
Clarksville	2.5	1.3	.4	3.4	3.8	25.62
Lexington	4.9	2.5	.4	7.0	7.4	23.21
Louisville	20.1	8.9	6.0	23.0	29.0	31.99
Owensboro	1.7	.7	.6	1.8	2.4	27.31
Maine						
Bangor	.8	.2	.2	.8	1.0	11.35
Lewistown	1.0	.1	1.1	1.0	1.1	15.36
Portland	3.1	.4	.4	3.1	3.5	18.06
Maryland						
Baltimore	2.1	.6	0.	2.7	2.7	25.48
Cumberland	2.1	.7	.1	2.6	2.7	24.21
Hagerstown						
Massachusetts						
Boston	95.1	23.3	35.1	83.3	118.4	42.83
Brockton	2.5	.3	.2	2.6	2.8	16.55
Fall River	3.4	.5	.8	3.1	3.9	22.04
Fitchburg	1.9	.3	.5	1.7	2.2	21.61
Lawrence	5.1	.8	.7	5.2	5.9	20.95
Lowell	3.6	.5	.4	3.7	4.1	17.61
New Bedford	3.0	.4	.4	3.0	3.4	20.27
Pittsfield	12.3	2.0	3.2	11.1	14.3	24.56
Springfield	6.7	1.1	.3	7.5	7.8	20.89
Worcester						
New Hampshire						
Manchester	2.8	.4	.4	2.8	3.2	20.12
Nashua	2.0	.3	.2	2.0	2.2	19.49
Portsmouth	4.2	.5	1.2	3.5	4.7	28.57
NEW JERSEY						
Atlantic City	3.8	1.1	.5	4.5	5.0	25.53
Jersey City	9.9	5.0			14.9	26.73
Long Branch	9.5	2.7	.8	11.4	12.2	24.30
New Brunswick	11.5	2.7	3.5	11.8	15.3	25.61
Newark	46.7	16.7	13.8	49.6	63.4	32.25
Patterson	5.5	2.2	.6	7.1	7.7	17.22
Trenton	4.9	1.8			6.7	21.70
Vineland	3.1	.9			4.0	29.90
NEW YORK						
Albany	14.2	5.1			19.3	24.24
Binghamton	4.0	1.3	.9	4.4	5.3	17.66
Buffalo	1.1	.3	.1	1.3	1.4	14.57
Elmira	1.3	.4	.4	1.3	1.7	15.84
Glens Falls	60.2	16.7			76.9	29.53
Nassau-Suffolk						
New York	4.3	1.3	.6	5.0	5.6	21.47
Newburgh	4.2	1.3	.9	4.6	5.5	22.62
Poughkeepsie	25.1	7.8			32.9	33.92
Rochester	16.3	5.4	8.1	13.6	21.7	33.78
Syracuse	4.7	1.6	.6	5.7	6.3	19.65
Utica						
OHIO						
Akron	24.1	4.8			28.9	43.70
Canton	14.4	2.6	2.9	14.0	16.9	41.87
Cincinnati	48.9	11.7	12.6	48.0	50.6	43.29
Cleveland, Columbus	26.0	5.6			31.6	38.08
Dayton						
Hamilton, Lorain	7.8	1.5	2.1	7.2	9.3	36.09
Middletown	3.9	.7			4.6	34.88
Mansfield	5.1	.9	.4	5.7	6.1	27.80
Lima	3.3	.8	.3	3.9	4.2	34.49
Newark	4.7	.8	.2	5.4	5.6	30.41
Springfield	20.5	4.1	7.0	17.7	24.6	31.03
Toledo	26.3	4.8	9.4	21.7	31.1	58.51
Youngstown						
PENNSYLVANIA						
Allentown	15.0	4.9	4.1	15.8	19.9	31.30
Erie	11.4	3.5	6.6	8.3	14.9	63.27
Harrisburg	8.8	2.8			11.6	25.99
Johnstown, Altoona	12.4	3.4	1.8	14.0	15.8	39.30
Lancaster	6.6	2.1			8.7	24.13
Northeast, Scranton	14.2	4.5	.5	18.1	18.6	29.12
Philadelphia	251.6	87.4	82.1	256.9	339.0	71.86
Pittsburgh	108.7	32.8	33.4	108.1	141.5	63.74
Reading	6.4	2.2	1.4	7.2	8.6	27.55
State College	2.2	.7	.1	2.8	2.9	25.59
Sharon	4.1	1.1	.6	4.6	5.2	40.23
Williamsport	2.3	.7	.1	2.9	3.0	24.96
York	8.9	2.6	1.5	9.0	11.5	30.15

TABLE 3.5-15.—EXTRAPOLATED DAMAGE ESTIMATES FOR 117 MSA'S IN NORTHEAST—Continued

City	Annual damages \$10*					Per Capita
	Material		Pollution		Total damages	
	Paint	Other *	Local	Re-gional		
RHODE ISLAND						
Providence	22.6	3.5	3.3	20.8	24.1	26.23
VERMONT						
Burlington	1.8	.2	0	2.0	2.0	17.87
VIRGINIA						
Charlottesville	1.6	.6	0	2.2	2.2	19.26
Danville	1.9	.6	.1	2.4	2.5	22.51
Lynchburg	2.5	.7			3.1	20.38
Norfolk						
Newport News	6.1	1.9			8.0	22.08
Petersburg	2.3	.8	1.3	2.0	3.1	23.65
Richmond	10.5	3.7	1.6	12.6	14.2	22.45
Roanoke	3.7	1.2	0	4.9	4.9	22.06
WEST VIRGINIA						
Charleston	9.5	2.8			12.3	45.71
Huntington						
Parkersburg	4.6	1.3	1.3	4.7	6.0	36.69
Steubenville, Wheeling	14.5	4.1	6.9	11.7	18.6	53.45

* Includes zinc, stone, and mortar damages.

Source: Mathtech (1985b).

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LONG-TERM ECOSYSTEM STRESS: THE EFFECTS OF YEARS OF EXPERIMENTAL ACIDIFICATION ON A SMALL LAKE

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[Graphics, charts, and some scientific formulas or equations mentioned in text are not reproducible in the RECORD.]

ACID EFFECTS ON A LAKE

Acid precipitation effects were simulated by the addition of sulfuric acid to a small lake in Canada during an 8-year experimental period, and the natural balance of plant and animal life was gradually destroyed (page 1395). Schindler *et al.* point out that the first irreversible disturbances to simple organisms were taking place even before significant changes in the pH were apparent. The mass of phytoplankton remained relatively constant; but new species appeared, and the numbers of organisms small enough to be eaten by the zooplankton declined, adversely affecting zooplankton and their predators. At the top of the food web, lake trout remained abundant, but were severely stressed. Filamentous algae overgrew their spawning grounds, normal prey (shrimp, minnows, and crayfish) died out, and the trout became thinner and cannibalized smaller trout. Shrimp died from hydrogen ion toxicity, minnows did not reproduce, and crayfish egg masses were infested with a fungal parasite. These are but a few examples of how the ecosystem was destroyed by acidification.

Ecologists believe that both natural and anthropogenic stresses cause changes in ecosystems that cannot be deduced from effects on individual species or populations because of the deterioration of ecosystem structure and function (1). The degree of such "ecosystem-level" responses to anthropogenic stresses, and the degree to which ecosystems can recover after the stresses are removed, are subjects of fundamental importance to natural resource management (2), yet only a few studies have been able to quantify the causes and effects of stresses on whole ecosystems (3, 4). Reasons for this include the following: (1) The ecosystems

were too large or complex to study in their entirety. (ii) Documentation of ecosystem structure, function, and natural variation prior to anthropogenic stress was inadequate. (iii) Individual stresses could not be quantified, or effects of one perturbation on the ecosystem could not be isolated from other stresses (5).

We were able to overcome many of these problems in an ecosystem-scale experiment in Lake 223, a small Precambrian Shield lake surrounded by virgin boreal forest in the Experimental Lakes Area, and typical of poorly buffered small lakes of northwestern Ontario (6-9). Over a period of 8 years, the pH of the lake has been gradually decreased from 6.8 to 5.0 by the addition of sulfuric acid. Our studies revealed various apparent mechanisms of response of the lake's biota to increased acidity, ranging from direct toxicity of hydrogen ion to disruptions of normal food-chain relations, behavioral patterns of animals, and biogeochemical cycles in the lake. In some cases, synergistic interactions of several stresses appeared to be involved. Some of the adverse changes occurred much earlier in the acidification process (that is, at higher pH than is commonly believed to cause ecosystem degradation). This suggests that early ecological damage from lake acidification may be more extensive than was previously believed, a result that should be of vital interest to agencies regulating the emission of acid precursors. Other effects were so subtle or so complex that they might have been undetected in a system less thoroughly studied. In this article, we summarize the biological results of the first 8 years of the Lake 223 experiment and compare our results with the responses that would be predicted if simpler methods were used, such as the laboratory toxicological or physiological tests that usually form the basis for regulating water quality standards or managing aquatic resources.

After a 2-year (1974 and 1975) background study, Lake 223 was acidified, from 1976 through 1983 (10, 11). Changes in the ecosystem caused by these additions are outlined below. Where possible, changes are compared with natural variability in nearby untreated lakes.

1976—Alkalinity decreased, but little apparent pH change. A mass balance budget for sulfate revealed that the addition of sulfuric acid had stimulated reduction of sulfate to sulfide in anoxic hypolimnetic waters (9, 12). Dissolved inorganic carbon decreased as was expected because of transformation of bicarbonate to carbon dioxide and degassing to the atmosphere. No other chemical changes were distinguishable from background years or from nearby, unmodified reference lakes. An increase in chironomid emergence over 1975 was the only biological change observed, but the increase was within the range of natural variation. Differences in zooplankton sampling methods did not permit data to be compared directly with those from other years.

1977—Average pH 6.13, target pH 6.00 (13). The relative abundance of chrysophycean species declined slightly from earlier years, but this group continued to dominate the phytoplankton. The abundance of chlorophytes increased (14-16) (Fig. 1A). Phytoplankton production, biomass, and chlorophyll were within limits of natural variation for lakes in the area (Fig. 1, B to D). Emerging dipterans and rotifers, particularly species of *Polyarthra*, *Kellicottia*, and *Keratella*, were more abundant than in 1974, but probably still within the range expected on

the basis of natural variation (17, 18) (Fig. 1, E and F). Populations of lake trout and white sucker remained within the range of natural variation (4), (Fig. 1G). None of the above factors was outside the normal range observed for reference lakes in the area.

(Abstract. Experimental acidification of a small lake from an original pH value of 6.8 to 5.0 over an 8-year period caused a number of dramatic changes in the lake's food web. Changes in phytoplankton species, cessation of fish reproduction, disappearance of the benthic crustaceans, and appearance of filamentous algae in the littoral zone were consistent with deductions from synoptic surveys of lakes in regions of high acid deposition. Contrary to what had been expected from synoptic surveys, acidification of Lake 223 did not cause decreases in primary production, rates of decomposition, or nutrient concentrations. Key organisms in the food web leading to lake trout, including *Mysis relicta* and *Pimephales promelas*, were eliminated from the lake at pH values as high as 5.8, an indication that irreversible stresses on aquatic ecosystems occur earlier in the acidification process than was heretofore believed. These changes are caused by hydrogen ion alone, and not by the secondary effect of aluminum toxicity. Since no species of fish reproduced at pH values below 5.4, the lake would become fishless within a decade on the basis of the natural mortalities of the most long-lived species.)

1978—Average pH 5.93, target pH 5.75. Several key organisms in the lake's food web were severely affected. Between October 1978 and May 1979, the number of opossum shrimp, *Mysis relicta*, declined from 7×10^6 to only a few animals (19). The fathead minnow, *Pimephales promelas*, failed to reproduce (4). In the phytoplankton, different species of chlorophytes, cyanophytes, and Peridineae appeared at the expense of original diatom and chrysophycean species (15). Primary production was slightly higher than in any previous year, and chironomid emergence continued to increase relative to the reference lake 226S (Fig. 1, B and E). The copepod species *Diatomus sicilis*, which had been rare in the lake, disappeared.

1979—Average pH 5.64, target pH 5.50. Filamentous algae of the genus *Mougeotia*, which had not been noticed previously, formed highly visible, thick mats in littoral areas (20). These persisted throughout the remaining years of study. The exoskeletons of crayfish, *Orconectes virilis*, hardened more slowly after molting, and animals remained softer than in previous years or in reference lakes (21). *Pimephales* declined to near extinction because of its reproductive failure in 1978 and again in 1979, its short life expectancy, and possibly increased predation by lake trout (Fig. 1I). The slimy sculpin, *Cottus cognatus*, also declined in abundance (Fig. 1H), chiefly in the oldest and youngest age classes. Contrary to what we had expected from the reported data on acidification, phytoplankton production and chironomid emergence remained high, probably contributing to the increased abundance of young-of-the-year of both white sucker and lake trout (4). Changes in the species composition of phytoplankton described for 1978 became more pronounced. The large copepod *Epischura lacustris* became very rare (17).

1980—Average pH 5.59, target pH 5.25. Phytoplankton biomass again increased relative to previous years and reference lakes. Whereas, on average, chrysophyceans were

still dominant, Peridineae and Cyanophyceae increased. The acidophilic diatom *Asterionella ralfsii*, which had previously been rare in the lake, appeared in large numbers, causing a decline in soluble silicate (Fig. 1J) (22). The copepod *Epischura lacustris* disappeared and has not been recorded since. The cladoceran *Daphnia catawba* was observed in the lake for the first time (23) probably competing with *Daphnia galeata mendotae*, which became rare in 1981. Other species were unaffected. As a result, there was no marked decrease in the biomass or total number of crustacean species (17). In fact, the average numerical abundances and biomass of both planktonic crustaceans and rotifers were the highest in the 8-year period of observation. Increases were noted for the previously recorded cladoceran species, *Bosmina longirostris*. Likewise, the number of pearl dace (*Semotilus margarita*) increased rapidly, apparently using resources that had supported *P. promelas* prior to acidification (Fig. 1K) (24). *Pimephales promelas* was now very rare in the lake. Chironomid emergence reached an all-time high, despite increases in pearl dace and young white sucker, which are both potential predators on chironomid larvae. The condition of lake trout was poorer than in 1977 and 1978, but similar to preacidification values (Fig. 1G).

Two new stresses were evident in *Orconectes* at this pH. In addition to the recalcification problem mentioned above, infestation of the population with a microsporozoan parasite of the genus *Thelohania* was higher than in background lakes (25). Egg masses were often infested with fungi, and empty egg capsules were often observed on ovigerous females. These phenomena were only rarely observed in four reference lakes. No young-of-the-year *Orconectes* were observed. There was no lake trout recruitment in 1980, although normal spawning had been observed in October 1979 (4, 26).

1981—Average pH 5.02, target pH 5.00. Chrysophycean abundance declined dramatically, with replacement by Peridineae and Cyanophyceae (Fig. 1A). Epilimnetic phytoplankton production and biomass remained slightly higher than normal (Fig. 1, B and C). *Diaphanosoma leuchtenbergianum* (= *D. birgei*) and *Daphnia galeata mendotae* disappeared early in the ice-free season. *Holopedium gibberum*, *Daphnia catawba*, and *Bosmina longirostris* as well as several species of rotifers continued to increase in abundance (23). Most of the remaining species of copepods declined in abundance. White sucker recruitment ceased, even though growth and survival of individuals over 1 year of age were similar to values in unperturbed lakes in the area. Numbers of white sucker were still abnormally high, due to the large recruitment in 1980. Spawning in May 1981 appeared normal, but no fry were present in the summer. In each of the previous years fry and fingerlings had been numerous and easily captured. Growth in length, survival, and abundance of lake trout remained normal as well, even though recruitment failed for the second consecutive year and condition continued to decline (4) (Fig. 1G). The crayfish population dwindled, reaching a few percent of preacidification values by late fall (Fig. 1H). No young-of-the-year were seen, and the exoskeletons of adults were far softer than normal. *Thelohania* infestation increased to 9 percent of the population (25). Despite its earlier positive response to acidification, very few young-of-the-year *Semotilus* were present, as illus-

trated by the decreases in small-sized fish. Sculpins were very rare (Fig. 1H).

1982—Average pH 5.09, target pH 5.00. Phytoplankton groups were similar to 1981. Phytoplankton production was slightly less than in 1981, but this was also the case for all reference lakes (Fig. 1B). While the pH in 1982 was nearly identical to that in 1981, a considerable increase in chlorophyll was observed. Spawning behavior of lake trout changed. In all years before 1982, these fish had spawned at the same locations along the shore of the lake. In 1982, these sites were partially covered with *Mougeotia*. This possibly explains why trout spawned in areas where spawning was not previously observed (26). Lake trout condition had become very poor. Crayfish had nearly disappeared. No young-of-the-year of any fish species were observed (4, 26). Although numerical data are lacking, leeches were rare. Zooplankton species, numbers, and biomass were similar to 1981.

1983—Average pH 5.13, target pH 5.00. Even though pH values were held nearly constant for the third consecutive year, changes in the food web continued to occur. Phytoplankton were now relatively stable in composition, with Peridineae and Chrysophyceae being predominant with unusually high proportions of Cyanophyceae and Chlorophyceae present, including numerous forms with tests or gelatinous sheaths (22,27). Phytoplankton production was also stable relative to reference lakes. While lake trout were still numerous, their condition declined below the lowest levels observed for other populations in the area (Figs. 1G and 2) as might be expected from the severe disruption of the food web. Increased frequency of cannibalism put further stress on the remaining small trout, probably because of the scarcity of the minnows and benthic crustaceans that are normal prey for large trout. Lake trout spawned at locations different from those of other years. There was no successful recruitment by any species of fish in the lake. Crayfish, leeches, and the mayfly *Hexagenia*, previously abundant in the lake, were absent by fall (25).

Long-term trends. In addition to the changes documented above, a number of the factors being measured changed slowly or erratically in the course of acidification, becoming significantly different from background after several years. Although phytoplankton production increased for several successive years during acidification, there was a reduction in the proportion of phytoplankton of the size that could be eaten by zooplankton. Small edible species were gradually replaced by large test- or mucilage-covered forms (Fig. 1A). A decrease in the mean body size of zooplankton, resulting from the increase in rotifers and small-bodied cladocerans, such as *Bosmina longirostris* relative to larger copepods and cladocerans, probably also favored the survival of larger phytoplankton and lowered the efficiency of energy transfer. Chironomid emergence increased through 1980, roughly in proportion to phytoplankton production; afterwards it declined to values observed in the reference basin (17, 18) (Fig. 1E). Reduction of sulfate to sulfide increased continuously, in proportion to sulfate concentrations (9, 12). Concentrations of calcium, manganese, aluminum, and possibly zinc increased in the water (28, 29) while silicate decreased (Fig. 1J). There were no other significant changes in water chemistry (29). By 1983, it was obvious that the condition of lake trout had declined slowly from 1977 onward (Fig. 1G).

Results that contradict current beliefs. Many of our results were different from those deduced from laboratory and synoptic monitoring studies. Some effects of acidification were more dramatic than expected, and some were the opposite of what we had anticipated. We had expected a decrease in phytoplankton production and chironomid emergence during acidification, yet no decrease was observed. In fact, data show a possible increase (Fig. 1B) (7, 9, 30). After 8 years of acidification, periphyton production was similar to reference lakes in the area, despite the increased abundance of filamentous algae (31). No decrease in phosphorus was observed, as has been hypothesized to result from either interception of nutrients by benthic mats or by precipitation due to increased aluminum concentrations (32). The phytoplankton standing crop, chlorophyll, and production per unit of phosphorus were similar to those in other lakes in the area (33). Rates of decomposition in the lake were unaffected by acidification, apparently because the microflora at the sediment-water interface maintained a microenvironment with a higher pH (34).

Results that confirm current beliefs. As was expected from synoptic surveys made in Norway, benthic Crustacea and some cladoceran species were extremely vulnerable to acidification, whereas Diptera were not adversely affected (35). Dipteran emergence increased relative to a thoroughly studied control basin for the first several years of acidification (Fig. 1E). The epidemic of *Mougeotia* provides clear evidence that the appearance of this genus in the lakes of regions subjected to industrial pollution is caused by acidity rather than by some co-occurring stress unrelated to acidification. The sensitivity of *Primephales* to acidification confirms laboratory studies of long-term toxicity (36), and the problems with calcium uptake suffered by *Orconectes* at low pH agree with the observations from physiological studies (21). Various mechanisms have been proposed to explain changes in fish populations to acidification, including direct toxicity, reproductive or recruitment failure, disruption of food-chain relations, disappearance of spawning sites, and effects of aluminum (37). With the probable exception of aluminum, all of these changes have occurred in Lake 223. In that the watershed of the lake was not acidified, the range of aluminum concentrations observed in Lake 223 was only 7 to 36 µg per liter, far less than the concentrations that have caused mortality among fishes during episodic events. One or more of the other factors appeared to affect every species of fish that we studied (4).

Implications for monitoring studies to detect acidification. Most monitoring programs now used for detecting lake acidification rely heavily on measurements of pH and abundance of adult sport fishes. Our study suggests that these factors are not sensitive reliable indicators of early damage due to acidification. For example, twice weekly pH measurements did not reveal the disappearance of 80 percent of the alkalinity from Lake 223 in 1976, the first year of acidification. Once bicarbonate alkalinity is eliminated, pH measurements become more useful, although electrode pH measurements in Precambrian Shield lakes may be in error by several tenths of a pH unit, as a result of interference by dissolved organic carbon and variations of the partial pressure of CO₂ from atmospheric equilibrium (38). While alkalinity is a far more sensitive early indicator of acidification, reliable

measurements in poorly buffered waters were rare before the late 1970's.

Similarly, most large fishes are not sensitive indicators of early stages of acidification damage. Large populations of lake trout and white sucker still exist in Lake 223, even though there has been no recruitment into the lake trout population for 4 years and into the white sucker population for 3 years. The food web supporting lake trout has been so severely disrupted that continued acidification would cause almost complete disappearance of this species within the decade. Indeed, the paucity of suitable food organisms and the loss of younger year classes may make it easier for anglers to catch more and larger sport fish at this stage of the acidification process. If monitoring of fishes is to be useful, it must include long-term studies of reproduction, condition, and age structures of populations.

Both survey work in Scandinavia and our study suggest that benthic crustaceans are very sensitive indicators of acidification (19), but collection of these species is rarely incorporated in acidification monitoring in North America. *Pimephales*, an important forage fish, also appears to be sensitive (4). However, detailed distributions of these species are not known, and records of their occurrence in lakes prior to acidification are rare, so that it is difficult to tell whether their absence from a lake is due to acidification stress, to natural zoogeographical distribution patterns, or to year-to-year changes in abundance. The above species have much shorter life cycles than larger fishes so that they disappear rapidly after reproductive failure.

Phytoplankton production, rates of decomposition, and nutrient concentrations did not decrease in Lake 223, suggesting that these factors are not sensitive to acidification. There seems to be little point in incorporating these insensitive variables in broad-scale monitoring programs. Phytoplankton species diversity and species numbers were also unaffected during early stages of acidification, although there was some evidence of a decline in diversity during midsummer from 1981 to 1983 when the pH of the lake was 5.0 to 5.2 (Fig. 1L). In contrast, shifts from a largely chrysophycean community to one where chlorophycean, cyanophycean, and peridinean species were often dominant in the phytoplankton, the predominance of acidophilic indicators such as *A. ralfsii* and certain species of *Gymnodinium* in the phytoplankton and of the genus *Mougeotia* in the periphyton, do not occur in circumneutral lakes. Such taxonomic changes appear to be reliable indicators of early acidification. Because most monitoring studies have rarely included the most sensitive indicators of acidification, it seems probable that they have underestimated the extent and degree of damage to lakes due to acid precipitation.

Implications for laboratory and microcosm studies. Laboratory tests of metabolic processes have usually overestimated the stresses of acidification on ecosystems. When samples of lake water or sediment are acidified rapidly, decreases in growth, photosynthesis, nutrient exchange, or decomposition normally occur (39). However, such experiments disregard the inherent resilience of natural ecosystems. For example, when some species of phytoplankton disappear as the result of acidification, others from the reservoir of species in a lake appear or increase, so that photosynthesis contains at a normal or even increased rate.

The magnitude of food-web disruption which occurred early in the acidification of Lake 223 could not have been predicted from small-scale studies. Redundant features of the Lake 223 ecosystem—such as the increase in *Semotilus* when *Pimephales* disappeared, and the increase in *Daphnia catenata* when *Daphnia galeata mendotae* declined—undoubtedly delayed the effect of food-web damage on upper trophic levels. For example, the condition of lake trout declined slowly over several years as the abundance of key species of its prey became rarer. The overall increase in *Daphnia catenata* could have resulted from the elimination of *Mysis relicta* by acidification because the latter species preys heavily on large Cladocera (40).

Likewise, laboratory or microcosm studies cannot predict declines or disappearances that result from the interaction of multiple stresses. The demise of *Orconectes virilis* appeared to involve disruption of recalcification, indicating problems in regulating ion balance, increased infestation with microsporozoan and fungal parasites, increased egg losses, decreased survival of young-of-the-year, and possibly increased predation by lake trout. Detrimental effects on lake trout included a host of food-chain, physiological, reproductive, and behavioral interactions. While it is difficult to isolate the effects of single stresses in an ecosystem-scale study, it is clear that the large herbivorous or carnivorous species which are of most concern to man cannot be realistically studied in an experimental vessel smaller than a whole ecosystem.

The experimental conditions imposed on small-scale experiments often are not a realistic simulation of those in natural ecosystems (41). For example, we have shown that decomposition in undisturbed surface sediments is not affected when overlying water is acidified because high pore water pH values are maintained by the action of microbes. In contrast, decomposition decreases when the pH of sediments is deliberately lowered in laboratory experiments, but such conditions do not occur in acidified lakes (34).

Experimental ecosystem manipulations can reveal which properties of ecosystems are likely to be sensitive to particular stresses. They can also elucidate interactive features of ecosystem organization that would aid in the interpretation of results from smaller scale studies and allow the calibration of paleoecological methods (42). Such studies can play a key role in the detection and interpretation of man's impact on natural ecosystems.

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2. For example, J. Cairns et al., Eds., *Estimating the Hazard of Chemical Substances to Aquatic Life* (American Society of Testing and Materials, Philadelphia, 1978); *Recovery and Restoration of Damaged Ecosystems* (Univ. of Virginia Press, Charlottesville, 1977); S. A. Levin, S. Kimball, K. Kimball, W. McDowell, Eds., *New Perspectives in Ecotoxicology* (Report 14a, Ecosystems Research Center, Cornell University, Ithaca, N.Y., 1983).
3. See, for example, G. E. Likens et al., *Ecol. Monogr.* 40, 23 (1970); G. M. Woodwell, *Ambio* 10, 143 (1982); see also papers in *Can.*

J. Fish. Aquat. Sci. 37 (No. 3) (1980) and *ibid.* 41 (No. 4) (1984).

4. K. H. Mills, in *Early Biotic Responses to Lake Acidification. Acid Precipitation Series*, G. R. Hendry, Ed. (Ann Arbor Science, Ann Arbor, Mich., 1984), vol. 6, pp. 117-121.

5. In particular, airborne pollutants subjected to long-range transport are numerous, difficult to isolate, and many have synergistic effects. For example, National Academy of Sciences, *Atmosphere-Biosphere Interactions: Toward a Better Understanding of the Ecological Consequences of Fossil Fuel Combustion* (National Academy Press, Washington, D.C., 1981); F. H. Bormann, "Factors confounding evaluation of air pollution stress on forests: Pollutant input and ecosystem complexity," presented at the symposium, "Acid Deposition, a Challenge for Europe," Karlsruhe, Germany, 19 to 23 September 1983.

6. Lake 223 has an area of 27.3 ha, a mean depth of 7.2 m, and a maximum depth of 14.4 m. The Experimental Lakes Area and the whole-ecosystem experiments which are its mandate are described in (entire issues) *J. Fish. Res. Board Can.* 28 (No. 2) (1971); *ibid.* 30 (No. 10) (1973); *Can. J. Fish. Aquat. Sci.* 37, No. 3 (1980).

7. Summary papers on the experimental acidification studies are D. W. Schindler in (9), Schindler and Turner (10), and Mills (4).

8. D. Drablos and A. Tollan, Eds., *Ecological Impact of Acid Precipitation* (SNSF Project, Oslo, Norway, 1980).

9. D. W. Schindler et al., *Can. J. Fish. Aquat. Sci.* 37, 342 (1980).

10. Sulfuric acid was added to the epilimnion of the lake during the ice-free season, by draining it slowly into the propeller wash of a moving boat powered by a 15-hp outboard, which crisscrossed the lake several times over a period of 1 to 2 hours while the acid was added. The resulting distribution of acid was relatively uniform horizontally. No acid penetrated the thermocline of the lake. Enough acid was added to the lake in May of each year to reach the "target" pH value, after which sufficient acid was added two to three times each week to maintain pH near to, but not below, the target value. The resulting temporal distribution of acid added to the lake was similar to that expected in the northern United States and southern Canada, with a spring "pulse" after snowmelt, followed by intermittent smaller additions during the rest of the ice-free season. In 1976, acidification reduced the alkalinity of the lake from preacidification values of 80 to 100 μeq per liter to less than 20 μeq per liter. Despite this enormous loss of alkalinity, lake pH values were similar to those measured in background years (time-weighted annual means for 1974 to 1976 were 6.71, 6.65, and 6.49, respectively), illustrating the relative insensitivity of pH as an indicator of early lake acidification (11). In 1977, we lowered the pH of the lake to about 6.0 to 6.1. In subsequent years, we added enough acid to lower the pH of the epilimnion from 6.0 to 5.0 to 5.1 in increments of about 0.25 pH unit per year. From 1981 to 1983, only enough acid was added to maintain the lake at pH 5.0 to 5.1. See D. W. Schindler et al. (9); D. W. Schindler and M. Turner, *Water Air Soil Pollut.* 18, 259 (1982).

11. In natural ecosystems, pH values are affected not only by bicarbonate alkalinity, but by the partial pressure of CO_2 , which can range from greatly undersaturated to greatly oversaturated, depending on biological and physical processes (D. W. Schindler et al., *Science* 177, 1192 (1972); A. Herczeg

and R. H. Hesslein, *Geochim. Cosmochim. Acta* 48, 837 (1984)).

12. R. B. Cook and D. W. Schindler, "Environmental biogeochemistry," *Ecol. Bull. (Stockholm)* 35, 115 (1983).

13. The average and target pH values are for the epilimnion of the lake. Hypolimnion values were higher, due to the combination of sulfate reduction and precipitation of iron sulfides (9, 12).

14. The phytoplankton changes described are for the epilimnion in the ice-free season only. The original chrysophycean species were still dominant early in 1977, but were replaced by Chlorophyceae (chiefly *Oocystis submarina* var. *lacustris*, and *Dictyosphaerium simplex*) and Cyanophyceae (*Merismopedia glauca*) in midsummer. Over the years, this shift became more and more pronounced with more new species appearing. Peridiniaceae (*Gymnodinium* spp.) became abundant beginning in 1980 (15).

15. D. L. Findlay and G. Saesura, *Manuscr. Rep. Can. Fish. Aquat. Sci. No. 1585* (1980).

16. D. W. Schindler, "Experimental acidification of a whole lake: a test of the oligotrophication hypothesis," in (8), p. 370; D. Findlay, *Can. Manuscr. Rep. Fish. Aquat. Sci.* 1761 (1982).

17. D. F. Malley, D. L. Findlay, P. S. S. Chang, "Ecological effects of acid precipitation on Zoo-plankton" in *Acid Precipitation: Effects on Ecological Systems*, F. M. D'Itri, Ed. (Ann Arbor Science, Ann Arbor, Mich., 1982), pp. 297-327.

18. I. Davies, *Can. J. Fish. Aquat. Sci.* 37, 523 (1980); unpublished data. The total number of crustacean species present in the lake in a given year was from 8 to 11 before fertilization, increasing to 15 in 1980, then declining to 8 to 9 by 1983.

19. Approximately 7×10^4 *Mysis* were present in the lake in 1978 at a pH of 5.8 to 5.9. The population density and age structure were similar to those in reference lakes, and *Mysis* appeared to reproduce normally. Numbers were reduced by 96 percent by August of 1979, a year in which the pH averaged 5.6. The remaining few animals were eliminated during the fall of 1979. R. W. Nero and D. W. Schindler, *Can. J. Fish. Aquat. Sci.* 40, 1905 (1983); R. W. Nero, thesis, University of Manitoba, Winnipeg (1981); several species of bottom-feeding crustaceans have also been identified as among the most acid-sensitive organisms in Norway (J. Okland and K. Okland, "pH level and food organisms for fish: Studies of 1000 lakes in Norway," in (8), p. 326) and elsewhere in Canada (R. W. Nero and L. Grapentine, personal communication).

20. This genus is common in the littoral areas of acidified lakes in eastern North America and Scandinavia; P. M. Stokes in *Effects of Acid Rain on Benthos*, R. Singer, Ed. (North American Benthological Society, Springfield, Ill., 1981), p. 119; more detailed studies of filamentous algae during acidification have been made in Lake 302, suggesting that filamentous algae begin to increase when alkalinity declines, prior to major changes in pH (M. A. Turner, unpublished data).

21. This observation was made both in laboratory studies by D. F. Malley [*Can. J. Fish. Aquat. Sci.* 37, 364 (1980)]; and on field samples by I. J. Davies, unpublished data.

22. D. L. Findlay, unpublished data; *Asterionella ralfsii* was not observed in the plankton before 1980; from 1981 to 1983, it constituted nearly 100 percent of the planktonic diatoms. There was no increase in total diatom biomass. *A. ralfsii* frustules are

very resistant to dissolution in lake sediments and are commonly used by paleoecologists as an indicator of lake acidification. This increased resistance to dissolution would hinder recycling and has been suggested to have caused the decrease in silicate.

23. D. F. Malley and P. S. S. Chang, unpublished data; Malley *et al.* (17) referred to *D. catawba* as *D. catawba* × *schoedleri* after J. L. Brooks, "The systematics of North American *Daphnia*," *Mem. Conn. Acad. Arts Sci.* 12 (1957); individuals in the population show features of species within the *Pulex* group but come closest to resembling *D. catawba*.

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calculated from weekly to monthly samples and then divided by the long-term mean, resulting in a group of numbers clustered about 1.0. These clusters did not depart significantly from normal distributions. For each year, the average ratio of the annual mean to the long-term mean was calculated for all control lakes, and 95 percent confidence limits were calculated. For the four examples shown, data from two to eight control lakes were used in any year, varying somewhat with the difficulty and cost of measurement. Lake 223 annual averages, normalized to the long-term mean as described above are shown for comparison with reference lakes. The following data allow conditions in lake 223 before acidification to be compared to long-term means for four to six reference lakes in the area, for the period 1974 to 1982. Means and standard deviations are given for reference lakes, followed by the preacidification value for Lake 223 in brackets. Phytoplankton production, as carbon, 164 ± 60 mg/m² per day (140 ± 56); phytoplankton biomass, 1.03 ± 0.41 mg/liter (0.69 ± 12); chlorophyll a, 3.00 ± 0.84 µg/liter (1.92 ± 0.14); dissolved inorganic carbon, 1.41 ± 0.61 mg/liter (1.60 ± 0.07); Ca, 2.43 ± 0.85 mg/liter (2.19 ± 0.02); SO₄, 4.09 ± 0.99 mg/liter (3.35 ± 0.20); Si, 1.20 ± 1.04 mg/liter (1.29 ± 0.01); total nitrogen, 314 ± 51 µg/liter (272 ± 25); and total phosphorus, 6.6 ± 1.2 µg/liter (6.8 ± 0.1). Mean depth and lake surface area hectare for Lake 223 and the reference lakes (mean and standard deviation, $n = 6$) were 7.2 versus $7.2 \text{ m} \pm 3.3 \text{ m}$, and 27.3 ha versus $31.3 \text{ ha} \pm 16.6 \text{ ha}$, respectively.

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KEY TABLES FROM EPA'S EASTERN LAKES SURVEY

TABLE 1.—TOTAL NUMBER AND SAMPLED NUMBER OF TARGET POPULATION LAKES AND THE ESTIMATED NUMBER OF LAKES AT OR BELOW pH 5.0 AND ANC 50 MEQ/L IN EASTERN LAKE SURVEY REGIONS. ESTIMATED POPULATIONS SHOWN WITH 95 PERCENT UPPER CONFIDENCE LIMITS (95 PERCENT UCL)

Region	Total		At or below pH 5.0		At or below ANC 50 µeq/l	
	Target population	Number sampled	Number sampled	Estimated total ¹ in target population (95 percent UCL)	Number sampled	Estimated total ¹ in target population (95 percent)
1.....	7,206	771	34	261 (343)	175	1,360 (1,533)
2.....	8,512	595	28	143 (207)	170	1,257 (1,555)
3A.....	286	102	0	0 (0)	3	3 (5)
3B.....	2,185	151	26	260 (386)	66	755 (965)

¹ Explanatory note.—The "estimated population" numbers shown are statistical estimates, which have a margin of error. The estimate in parenthesis is the upper limit of that statistical margin of error that can be cited with 95 percent confidence.

TABLE 2.—ESTIMATED PERCENTAGE OF THE TARGET POPULATION LAKES HAVING pH AT OR BELOW 5.5 AND 5.0, AND ANC AT OR BELOW 50 AND 200 mg/l

Region	(Estimated percent)			
	pH		ANC (mg/l)	
	<5.0	<5.5	<50	<200
1 (Northeast)	4	9	19	60
2 (Upper Midwest)	2	4	15	41
3A (Appalachia)	0	0	1	36
3B (Mostly Florida)	12	20	35	54

Note.—pH refers to levels of lake acidity. ANC refers to acid neutralizing capacity, or the buffering capacity of a water body.

ACID DEPOSITION, SMELTER EMISSIONS, AND THE LINEARITY ISSUE IN THE WESTERN UNITED STATES

(Michael Oppenheimer, Charles B. Epstein, Environmental Defense Fund, Inc., New York; Robert E. Yuhnke, Environmental Defense Fund, Inc., Boulder, Colorado)

(Abstract. *The variation in sulfur dioxide emissions from nonferrous metal smelters in the western United States over a 4-year period is compared with the variation in sulfate concentrations in precipitation in the Rocky Mountain states. The data support a linear relation between emissions and sulfate concentration. The geographic separation of emissions sources and precipitation monitors indicates a sulfur transport scale exceeding 1000 kilometers.*)

The relation between SO₂ emissions at particular sources and acid deposition at distant receptors has been the subject to several investigations (1, 2). Because of the sparsity of historical deposition data, the lack of large excursions in emissions in recent years, and the high source density with low gradients, empirical studies of SO₂ emissions and deposition in eastern North America have not permitted the determination of definitive spatial or temporal relations between emissions at sources and deposition at distant receptors (2).

The intermountain region of the western United States (from the Sierra crest to the continental divide) is an especially suitable region for studying long-range transport and source-receptor relations because it is characterized by a few large point sources with fluctuating emissions—nonferrous metal smelters—which are responsible for most of the region's SO₂ emissions. In this report, we compare the time series of smelter emissions with that of annual average wet sulfate concentration using data from National Atmospheric Deposition Program (NADP) stations in Colorado, Wyoming, and Idaho, which are remote from major sources, as well as from one station in Arizona near the smelters (3). The large variation in both emissions and concentration over the period of our study allowed us to identify unambiguously the smelter emission signal in the concentration data. Such large variations can be thought of as representing an unintentional experiment on the atmosphere that could not be performed readily in the eastern United States. A previous study (4) covering a restricted area identified the smelter emission signal in airborne sulfate particle data.

TABLE 1.—Annual VWM sulfate concentrations at NADP recording stations (Fig. 1). All precipitation-monitoring stations in the intermountain region downwind (9) of the smelters that had data for at least 30 weeks during 10 months in 1981 (when a large emissions increase occurred) and 1982, including three stations just east of the continental divide, are listed. The error due to imprecision in sampling and chemical analysis was less than 10 percent (18). Quality control of sampling and analysis procedures by monitoring stations and the central analytic laboratory has been described (19). VWM sulfate concentration was averaged over all stations for each year to yield a CVWM; the difference between CVWM concentrations for 1981 and 1982 was statistically significant ($P < 0.01$, t -test) and greater than 0.47 mg per liter ($P = 0.05$, t -test). Values in parentheses for 1982 represent the standard deviation in monthly mean sulfate concentration, which is a measure of site-specific within-year variation. Data for the Hubbard Brook and Hopland sites, provided for comparison, are not included in the CVWM.

Site (number)	Annual mean sulfate concentration (milligrams per liter)			
	1980	1981	1982	1982
Alamosa, Colorado (1)		1.81		1.43 (0.75)
Sand Spring, Colorado (2)		1.05	1.60	0.96 (0.27)
Manitou, Colorado (3)			1.62	0.93 (0.42)
Pawnee, Colorado (4)		1.50	2.17	0.83 (0.49)
Rocky Mount, Colorado (5)			1.57	0.91 (0.35)
Yellowstone, Wyoming (6)			1.56	0.79 (0.27)
Craters of the Moon, Idaho (7)			0.91	0.61 (0.29)
Organ Pipe, Arizona (8)			2.14	0.87 (0.30)
CVWM (5)		1.28	1.60	0.86
Standard error (6)		0.22	0.14	0.06
Hubbard Brook, New Hampshire		2.45	2.25	2.13
Hopland, California		0.50	0.33	0.34

Concentrations of sulfate and other species in precipitation have been measured weekly by the NADP network since 1978. At locations in the inter-mountain region and other nearby receptors, only a few monitors operated for an entire year before 1980. Annual volume-weighted mean (VWM) concentrations of sulfate in precipitation for each station examined (Fig. 1) are listed in Table 1, along with the annual combined volume-weighted means (CVWM) (5). As an indication of intra-annual concentration variability, we determined for 1982 the standard deviations (6) in monthly mean (5) sulfate concentrations at each station (Table 1) and found them to be an average of 42 percent of the respective annual means.

The nonferrous metal smelters (Fig. 1) are a probable major source of the sulfate detected in precipitation because in 1980 and 1981 they emitted 63 and 74 percent, respectively, of the SO₂ in the intermountain region (7, 8). In addition, surface winds over the region indicate a general southwest to northeast airflow that is persistent from month to month for the entire year (9). A long-range transport modeling study that used upper-level winds also indicated that smelters are a significant source of sulfate in precipitation at stations in the Rocky Mountains (10). Data for SO₂ emissions from all nonferrous metal smelters in the intermountain region (grouped by state) that operated during the period 1980 to 1983 are compiled in Table 2. The smelters at Hurley and Hidalgo, New Mexico, which are immediately east of the continental divide, are also included. As an indication of the intra-annual emissions variability, we determined the standard deviation in monthly aggregate emissions and found them to be an average of 30 percent of the average monthly emissions during the period 1980-1982.

Electric power plants account for two-thirds or more of the remaining SO₂ emissions in the region (8). Their emissions from 1980 to 1982 varied by less than 4 percent of the total emissions from smelters plus power plants (11), which together account for about 90 percent of regional emissions. By comparison, the variation in smelter emissions was an order of magnitude larger than that in power plant emissions during the period.

Annual sulfate concentrations for all recording stations are plotted against time for the period 1980-1983 in Fig. 2. The figure illustrates a generally synchronous variation of the concentrations at all intermountain and nearby stations with smelter emissions values. . . . This variation was not observed for groups of stations in other states (3). For comparison, concentrations measured at the stations in Hopland, California (far west of the Sierra crest), and Hubbard Brook, New Hampshire, are listed in Table 2. Figure 2 indicates that nonferrous metal smelters contribute significantly to sulfate concentrations at these stations and that a large fraction of precipitation sulfate originates at distant smelter sources. We know of no other explanation for the observed pattern of similar and simultaneous changes in sulfate concentration at stations more than 1000 km from the sources and separated from one another by a comparable distance. Furthermore, an initial analysis of 1979 data indicates that concentrations (at sites 2 and 3, the only sites from which sufficient data were available) and emissions both declined from 1979 to 1980. Our interpretation is consistent with the importance of long-range transport suggested for these smelters and other sources in previous studies (4, 9, 12). Other studies (4, 13) indicate a relation between aerosol sulfate concentrations and smelter emissions over a more restricted area during 1979-1980.

A plot of the CVWM sulfate concentration against smelter emissions for each year (Fig. 3) shows that emissions from nonferrous metal smelters are linearly related to concentrations of sulfate in precipitation at stations remote from these sources. Variation in emissions from smelters may account for nearly all the variation in annual average sulfate concentrations at this group of stations.

This analysis is based on annual average data because on a shorter time scale changes in concentrations arising from emission changes are obscured by variations in photochemical behavior due to the seasonal cycle in the incident solar flux, atmospheric temperatures, and related parameters. In addition, the number of precipitation events included in monthly or weekly average concentrations is so small that fluctuations due to local meteorology diminish the significance of concentration differences. The persistence of the surface wind vectors (9) over the year suggests that the comparison of annual emissions and concentration data reflects the causal relation between smelter emissions and sulfate concentrations on a shorter time scale.

We have excluded changes in airborne, soil-based material as an important source of sulfate concentration variations. Although base cation concentrations also tend to vary (3) with sulfate concentrations, studies of fine particles (4, 14) and bulk precipitation (15) indicate that airborne base cations are largely of nonsulfate (presumably carbonate) origin in this region. The relation between sulfate and base cations may arise from increased metal-carbonate solubility with increasing acidity of atmospheric droplets.

Our study illustrates a response of precipitation chemistry to large changes in emissions at distant locations. The linear relation between changes in annual average sulfate concentrations and changes in emissions leads us to conclude that the overall atmospheric transformation process for SO_2 is effectively linear for the range of sulfate concentrations given in Table 1. Because these concentrations are at least half as great as those observed at many stations in the northeastern United States and are comparable to values recorded in the upper midwest and southeast (16), it appears that major nonlinearities are absent from the atmospheric chemistry of SO_2 over extended areas of the United States. Our data provide direct evidence from exclusively wet deposition monitors on the linearity question for North America. Previous comparisons between emissions and sulfate concentrations from bulk deposition monitors at Hubbard Brook (2) and indirect inferences drawn from mass budgets (17) and ion ratios (2) are consistent with our result. The magnitude of the standard errors (6) of the combined annual means (Fig. 3) is reasonably small (an average of 11 percent of the respective means), which suggests a geographic homogeneity of the intermountain airshed consistent with large-scale transport.

TABLE 2.—Sulfur dioxide emissions from nonferrous metal smelters. Monthly emission data were obtained from the smelter operators and from state air quality agencies, as indicated. For 80 percent of all emissions, data were derived by the materials-balance method, in which the weight of input and output materials is determined to within an uncertainty of less than ± 5.0 percent, and the sulfur content of all materials is determined to within an uncertainty of less than ± 1.0 percent (20). Emissions are calculated as the difference between input and output sulfur, with uncertainties estimated at 5.0 percent. For the remaining 20 percent of emissions, data were derived directly from stack monitors, which may be less reliable

State	SO_2 emissions (metric tons per year $\times 10^3$)				Reference
	1980	1981	1982	1983	
Arizona.....	579.0	794.1	374.3	445.7	(21)
Utah.....	45.6	76.8	63.7	44.7	(22)
Nevada.....	78.9	114.9	87.7	28.3	(22)
New Mexico.....	121.9	144.9	128.9	181.2	(22)
Total.....	825.4	1130.4	654.6	699.9	
Monthly standard deviation.....	36.2	4.7	18.2	¹ N.A.	

¹ N.A., not available.

The question remains as to whether the emissions data permit a monthly or seasonal analysis of the relation between sulfate concentrations and smelter emissions. The unusual emissions change and atmospheric response reported here provide an ideal opportunity to improve long-range transport models.

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FISCAL DISORDER

Mr. SIMON. Mr. President, I want to share with my colleagues a recent column in the Washington Post by James J. Kilpatrick.

Mr. Kilpatrick writes of his support, albeit reluctant, for Senate Joint Resolution 225, a version of a balanced budget amendment to the Constitution that I am pleased to cosponsor with Senators THURMOND, HATCH, and DECONCINI.

That is a list of cosponsors that spans the country geographically and ideologically, but we are united by our desire to end these terrible deficits and to return to sensible and responsible fiscal planning.

Mr. Kilpatrick raises important questions about any balanced budget amendment. But he also notes that Senate Joint Resolution 225 is written as an amendment to the Constitution should be written: Stating a goal, while leaving the mechanism to achieve that goal to the political process. It has a flexibility that is required when we amend this original document. As Mr. Kilpatrick writes:

It is short and simple. It has a constitutional feel that earlier, abominable drafts did not have.

This amendment will require us to balance the budget. But it will not tie the hands of future legislators. It is an amendment that our children and grandchildren can live with. And this is why we need to take this action—to preserve our economic future for the generations that follow.

Mr. President, I ask unanimous consent that the text of the article be printed in full in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 24, 1985]

FISCAL DISORDER

(By James J. Kilpatrick)

With every passing day, it becomes more clear that Congress will take no effective action toward balancing the bloated federal budget by general law. It may be that the time has come to consider an amendment to the Constitution.

That suggestion is voiced with great reluctance. Since the idea of such an amendment first was broached some 15 years ago, I have steadfastly opposed the proposition. Over and over I have insisted that the way to balance the budget is to elect responsible people to the House and Senate. I have objected that many drafts of proposed amendments were little more than statutory law—and miserable statutory law at that. Amendment of our supreme law is a serious business.

But what is to be done about these fearful deficits? Our government is drowning in red ink. Look at the record. We had a deficit in fiscal '81 of \$79 billion, a deficit in '82 of \$128 billion, a deficit in '83 of \$208 billion, a deficit in '84 of \$185 billion, and a deficit in the year that ended on Sept. 30 of \$212 billion. That adds up to \$812 billion over the five years of the Reagan administration. In the past 25 years we have balanced our income and outgo exactly twice. The national debt now exceeds \$2 trillion.

Borrowing of this magnitude is bad in every way. The deficits contribute to the high interest rates that add to the high cost of American goods. They are responsible for a dollar that is too strong against other currencies. This year the government must pay almost \$200 billion—a fifth of the total budget—in the form of interest. We are in one awful fiscal mess, and everyone is to blame for it.

In a spirit of panic and desperation three senators came up with a statutory approach. Phil Gramm of Texas, Warren Rudman of New Hampshire and Ernest Hollings of South Carolina drafted a bill to do the job by draconian whacks. They proposed to start from an arbitrary deficit figure of \$179 billion in 1986 and to wind up with a zero deficit in 1991. This amazing achievement would be brought off by mirrors and blue smoke. Without going into the infinite complexities of their design, it will suffice to say that various projections would trigger various provisions; the president would have to cut everything (with a few exceptions) across the board. We would thus stumble to a millennium.

The House took the Gramm-Rudman-Hollings bill, a bad bill to begin with, and made it worse. The House crammed back into the barn of sacred cows nearly all of the entitlement programs the Senate had proposed to leave out in the cold. The original Senate bill probably was unconstitutional. The whole thing is a dumb show, full of politics and posturing, but signifying nothing.

What now? If a constitutional amendment is to be considered, by far the best draft comes in the form of Senate Joint Resolution 225. This was approved by the Judiciary Committee on Oct. 23 and could be called up at any time. It is short and simple. It has a constitutional feel that earlier, abominable drafts did not have. It reads:

"Outlays of the United States for any fiscal year shall not exceed receipts to the United States for that year, unless three-fifths of the whole number of both houses of Congress shall provide for a specific excess of outlays over receipts."

A second section would authorize Congress to waive the provisions in time of war. A third section would make the amendment effective in the second fiscal year after its ratification.

I still have grave reservations. A perfectly balanced annual budget is not the be-all and end-all. Ideally we ought to put away a modest surplus in good times; we can tolerate a modest deficit in bad times. There is

nothing wrong with financing capital investments through bonds. I wonder how this amendment would be enforced if outlays did in fact exceed receipts. Would we get to June or July of a fiscal year ending in September, and discover that the ceiling would be breached in a matter of weeks?

The committee's proposed amendment may prove to be a toothless paper tiger. I don't know. But presumably it would lie on the table for three or four years while the states considered ratification. In that period, perhaps Congress would get our house in order. But don't bet on it.

THE ILLEGALITY OF APARTHEID

Mr. KENNEDY. Mr. President, I would like to call the attention of my colleagues to a paper written by Jordan J. Paust entitled "The Illegality of Apartheid and the Present Government of South Africa." Mr. Paust is a professor of law at the University of Houston and presented this paper at the 1985 annual meeting of the American Bar Association.

Professor Paust declares that the system of apartheid is not only evil but also illegal. In 1970, the United Nations General Assembly condemned apartheid. The International Court of Justice also affirmed that apartheid is in violation of the United Nations Charter.

Apartheid violates international law. "Apartheid often produces outcomes similar to those of genocide—at least in part—and slavery—if not fully—two practices now proscribed by customary international law and which the community knows can lead to criminal sanctions," states Paust.

In addition, Professor Paust amply supports the assertion that apartheid is an extreme form of human rights deprivation and violates the Universal Declaration of Human Rights. On several counts, the Government of South Africa lacks authority under international law. We in Congress should not allow the matter of sanctions and South Africa to become "out of sight, out of mind." To that end, I ask unanimous consent that the full text of this paper be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE ILLEGALITY OF APARTHEID AND THE PRESENT GOVERNMENT OF SOUTH AFRICA (By Jordan J. Paust*)

Within the last few months, U.S. Secretary of State Shultz recognized openly that South Africa's racist system of apartheid is evil. Such a realization, however, is hardly new, nor does it adequately reflect an increasingly widespread recognition in the United States and abroad that apartheid, under international law, is also illegal. Indeed, a growing number of nation-states have declared that the practice of apartheid constitutes a crime against humanity over which there is universal jurisdiction.

Fifteen years ago, in a special declaration made on the twenty-fifth anniversary of the

United Nations, the U.N. General Assembly reiterated its condemnation of "the evil policy of apartheid" and affirmed that apartheid "is a crime against the conscience and dignity of mankind and, like nazism, is contrary to the principles of the Charter."¹ One year later, in 1971, the International Court of Justice also affirmed:

"To establish . . . and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."²

Since then, numerous other authoritative pronouncements on the illegality of apartheid have been made within the structure of the United Nations and elsewhere. As expressed in their seminal work on *Human Rights and World Public Order*, McDougal, Lasswell and Chen add: "The thrust of all these authoritative condemnations, repeated again and again with only minor variations, is clearly toward the crystallization of shared general community expectations that apartheid, as an aggregate set of practices, is unlawful."³ More specifically, they note: "apartheid, taken as an aggregate set of practices, violates practically every important particular prescription for the protection of specific rights embodied in the Universal Declaration of Human Rights and in the International Covenants on Human Rights. This comprehensive and systematic violation of particular human rights prescriptions is fully documented, article by article, in the elaborate United Nations *Study of Apartheid and Racial Discrimination in Southern Africa*."⁴

Earlier in their study they remind the reader that apartheid is "much more than mere racial discrimination . . . ; it comprises a complex set of practices of domination and subjection, intensely hierarchized and sustained by the whole apparatus of the state, which affects the distribution of all values."⁵ Not surprisingly, as they summarize, "[t]he prescriptions which outlaw apartheid include those relating to slavery, caste, racial discrimination, self-determination, and other more particular human rights."⁶ "Increasingly," they add, "United Nations pronouncements also invoke certain prescriptions relating to crimes against humanity and threats to peace."⁷

In fact, in 1973, the U.N. General Assembly approved for signature the International Convention on the Suppression and Punishment of the Crime of Apartheid,⁸ a treaty designed to assure criminal sanctions and universal jurisdiction with respect to the already recognizably illegal practice of apartheid.⁹ The treaty now has nearly seventy nation-state ratifications,¹⁰ a relatively large number in one sense and yet a rather poor showing by governments some twenty years after the first formal condemnation of apartheid by the General Assembly as "a crime against humanity."¹¹ Nevertheless, as documented in a previous study, several international legal scholars have recognized that criminal sanctions for violations of basic human rights are entirely appropriate.¹² Indeed, it has long been accepted more generally that violations of international law are subject to criminal sanction and that civil or criminal sanctions have often been interchangeable, depending on whether an individual or government was seeking enforcement.¹³ Because apartheid often produces outcomes similar to those of genocide (at least in part) and slavery (if not fully), two practices now proscribed by

*Footnotes at end of article.

customary international law and which the community knows can lead to criminal sanctions,¹⁴ it may be even more appropriate to have criminal trials of those reasonably accused of having knowingly engaged in the practice of apartheid than it might be in the case of more ordinary violations of international law.

It is also worth noting that apartheid is a recognizably egregious form of human rights deprivation. Formal condemnations have often stressed the gross, flagrant and systematic nature of the denial of human rights and the fact that deprivations of basic or fundamental human rights are at stake.¹⁵ Moreover, as at least one author has noted, South Africa's racist system of apartheid has served as a primary and relatively unique catalyst for the unification of international sanction efforts, however effective such have or have not been thus far.¹⁶ Importantly, governments with varied ideologic and political orientations have been able, at least formally, to agree on economic, political and even militarily related sanction efforts against human rights deprivations engaged in by governmental elites of South Africa when they could agree on few others. Historically, however, the efforts against apartheid should aid in the greater effectuation of human rights for all persons—such might be among the curious benefits from evil.

Among the basic human rights violated by South Africa's systemization of apartheid are:

- (1) the right of each person to basic equality and dignity;
- (2) the fundamental right to freedom from discrimination, now part of the customary norm of nondiscrimination;
- (3) the right to life, liberty and security of person;
- (4) the right to be free from slavery or servitude, including an entrenched political and economic slavery;
- (5) the right to be free from cruel, inhuman or degrading treatment and from torture;
- (6) the right to recognition as a person before the law;
- (7) the right to equal protection of the law;
- (8) the right to an effective remedy in national courts for violations of human rights law;
- (9) the right to be free from arbitrary arrest, detention or exile;
- (10) the right, in full equality, to a fair and public hearing in the determination of one's rights;
- (11) the right to be presumed innocent until proved guilty according to law in a public trial at which one has the international guarantees of due process;
- (12) the right to be free from arbitrary interference with one's privacy, family, home and correspondence;
- (13) the right to freedom of movement and residence, including the right to leave the country and to return;
- (14) the right to a nationality;
- (15) the right, without any limitation due to race, nationality or religion, to marry and found a family;
- (16) the right freely to own property;
- (17) the right to freedom of opinion and expression;
- (18) the right to freedom of peaceful assembly and association;
- (19) the right to work, including free choice of employment;
- (20) the right to an adequate standard of living, including adequate food, housing and medical care;

(21) the right to education, including an equal educational opportunity;

(22) the right freely to participate in the cultural life of the community; and

(23) the fundamental right freely to participate in the political process.¹⁷

In short, South African apartheid, despite recent social and political concessions to blacks, "coloureds" and Asians, results in the deprivation of nearly every right documented in the Universal Declaration of Human Rights¹⁸ and thus also, as the International Court affirmed, in a flagrant violation of the purposes and principles of the United Nations Charter.¹⁹

Of particular concern is the denial of the human right of each person freely to participate in the political process which is documented in Article 21 of the Universal Declaration. It is common knowledge that the government of South Africa is at best a form of minority dictatorship, a form of government that excludes some seventy-three percent of the population (nearly 23 million blacks) from effective participation in the national political process and which now relegates nearly twelve percent of the population (some 2.6 million "coloureds" and 800,000 Asians) to a second class status in flagrant disregard of the right of each person freely to participate in the political processes of one's country. Not only does the South African governmental process deny the majority a right to participate, but clearly also the right of each person to "equal access to public service" documented in paragraph 2 of Article 21. Both denials, moreover, are at the heart of a systematic repression of self-determination in South Africa.

As recognized in numerous international instruments and by the International Court, all peoples have the right to self-determination and, by virtue of that right, to freely determine their political status.²⁰ Similarly, "the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned."²¹ As noted elsewhere, a state that complies with the precept of self-determination is one possessed of a government representing each and every person—the whole people—belonging to its territory.²² In fact, political self-determination is a dynamic process involving the genuine full and freely expressed will of a given people, that is, a dynamic aggregate will of individuals shaped by an equal and aggregate participation by individuals and groups in a process of authority.²³

As noted elsewhere, there is a significant consistency among the precept of self-determination, the human right to individual participation in the political process, and the only standard of authority recognized in international law.²⁴ Indeed, self-determination and human rights both demand that the only legitimate basis of the authority of any government is the will of a given people reflected through a dynamic process of individual participation. This point is made most clearly in paragraph 3 of Article 21 of the Universal Declaration, which affirms: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections. . . ." A legitimate government, the Universal Declaration affirms, is one in which the "will of the people" is the basis of authority. Significantly, such an authority exists lawfully on no other basis, in no other form.²⁵

Further, an oppression of the authority of the people is a form of political slavery that

is not only violative of human rights but also constitutes a treason against humanity. In response, the people of a given community have, under international law, the right to alter, abolish, or overthrow any form of government that becomes destructive of the process of self-determination and the right of individual participation.²⁶ As noted, such a government would lack authority and can be overthrown in an effort to ensure authoritative government, self-determination, and the human right of free and equal participation. Additionally, under international law, such an effort can be supported by other nation-states through the express right to self-determination assistance, a right tied to authoritative interpretation of the U.N. Charter.²⁷

From the above, it is evident that the present government of South Africa lacks authority under international law. It is an illegal regime designed quite clearly to repress self-determination and the right of individual participation.²⁸ It follows that it has no right under international law which it might use to assure its survival, including the derogation provisions of relevant human rights instruments.²⁹

The "authority of the people" is "the only authority on which government has a right to exist in any country." Thomas Paine, *The Rights of Man* 8 (1794)

FOOTNOTES

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¹ U.N. G.A. Res. 2627, 25 U.N. GAOR, Supp. (No. 28) 3, U.N. Doc. A/8028 (1970).

² Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), [1971] I.C.J. Rep. 16, 57 (para. 131) (hereinafter cited as *Namibia Case*). It is also a violation of the customary norm of nondiscrimination. See, e.g., *id.* at 76 (Separate Opinion of Vice-President Ammoun); *South West Africa Cases (Second Phase)*, [1966] I.C.J. Rep. 4, 284 (Tanaka, J., dissenting).

³ See M. McDougal, H. Lasswell & L. Chen, *Human Rights and World Public Order* 536 (1980). See also *id.* at 532-57, and references cited. Indeed, I know of no state besides South Africa that has not condemned apartheid. See also *id.* at 545 ("condemnation of apartheid has won practically universal support"). Similarly, if all of those who teach public international law in the United States were polled, I predict that, to a person, they would affirm the illegality of apartheid. Since the printing of *Human Rights and World Public Order*, the African Charter on Human Rights specifically calls for the elimination of apartheid. See Banjul Charter on Human and People's Rights, preamble, Jan. 7-19, 1981, OAU Doc. CAB/LEG/67/3/Rev. 5, reprinted at 21 *Int'l L. Mats.* 58, 59 (A.S.I.L. 1982). For further exposition, see Butcher, *A Review of the Legal Consequences for States of the Illegality of Apartheid*, in (this seminar).

⁴ *Id.* at 546-47. On this point, see also *id.* at 548-50, and references cited; and Butcher, *supra* note 3.

⁵ *Id.* at 523. On this point, see also *id.* at 524-30, and references cited.

⁶ *Id.* at 532.

⁷ *Id.*

⁸ U.N. G.A. Res. 3068, 28 U.N. GAOR, Supp. (No. 30) 75, U.N. Doc. A/9030 (vote: 91-4-26, with the U.S., U.K., Portugal and South Africa voting no).

⁹ For further exposition, see, e.g., Taubenfeld & Taubenfeld, *Human Rights and the Emerging International Constitution*, 9 *Hofstra L. Rev.* 475 (1981); Paust, *Federal Jurisdiction Over Extraterritorial Acts of Terrorism and Nonimmunity for Foreign Violators of International Law Under the FSIA and the Act of State Doctrine*, 23 *Va. J. Int'l L.* 191, 224 ff. (1983).

¹⁰ See, e.g., H. Hannum (ed.), *Guide to International Human Rights Practice* 299 (1980) (67 states as of 1982).

¹¹ See M. McDougal, H. Lasswell & L. Chen, *supra* note 3, at 535 n. 467, citing U.N. G.A. Res. 2202A, 21

U.N. GAOR, Supp. (No. 16) 20, U.N. Doc. A/6316 (1966).

¹² See, e.g., Paust, *supra* note 9, at 215, and references cited. See also Butcher, *supra* note 3, quoting Article 19, paragraphs 2 and 3(c) of the International Law Commission's Draft Articles and State Responsibility. In the United States, however, domestic implementing legislation should be enacted. A useful statute should merely create federal criminal jurisdiction over "offenses against human rights as defined by international law." See Paust, *supra* note 9, at 216 and 250 (for a draft bill to amend title 18 of the U.S. Code).

¹³ See, e.g., *id.* at 212, and references cited. On the private litigation of human right claims in domestic courts, see also American Branch of the International Law Association, Committee on Human Rights, Report on Human Rights Law, the U.S. Constitution and Methods of Judicial Incorporation, *Proceedings* 56-65 (1984), and references cited; Paust, *On Human Rights: The Use of Human Right Precepts in U.S. History and the Right to an Effective Remedy in Domestic Courts*, forthcoming.

¹⁴ See, e.g., M. McDougal, H. Lasswell & L. Chen, *supra* note 3, at 215, 302, 325-27, 355-56, 495-505, 507; Paust, Blaustein, *War Crimes Jurisdiction and Due Process: The Bangladesh Experience*, 11 *Vand. J. Trans. L.* 1, 20-22 (1978); Taubenfeld & Taubenfeld, *supra* note 9, at 512-14. See also Namibia Case, *supra* note 2, at 79-80 (Separate Opinion of Vice-President Ammoun ("no less punishable than the crimes against humanity and war crimes . . .")). Reisman, *Responses to Crimes of Discrimination and Genocide: An Appraisal of the Convention on the Elimination of Racial Discrimination*, 1 *Den. J. Int'l L. & Pol.* 29, 40 (1971); Paust & Blaustein, *supra* at 29-31 (use of force to deprive a people of the right to self-determination violates Article 2(4) of the U.N. Charter and constitutes a crime against peace).

¹⁵ See, e.g., M. McDougal, H. Lasswell & L. Chen, *supra* note 3, at 535-36, 541-42; Richardson, *Constitutive Questions in the Negotiations for Namibian Independence*, 78 *Am. J. Int'l L.* 76, 79, 94 (1984). Additionally, several rights at stake, such as the right to self-determination and the fundamental right to participate in the political process, are customary and peremptory. As the International Court has also recognized, "rules concerning the basic rights of the human person" are "obligations *erga omnes*" (i.e., owing by each person and each state to all persons). See the 1970 Case Concerning the Barcelona Traction, Light and Power Co. (Belgium v. Spain), [1970] I.C.J. Rep. 4, 32, at paras. 33-34. The United States agrees. See, e.g., Memorial of the United States before the International Court of Justice, at 71, in *Case Concerning United States Diplomatic and Consular Staff in Tehran* (United States v. Iran), [1980] I.C.J. Rep. 1: "The existence of such fundamental human rights for all human beings . . . and the existence of a corresponding duty on the part of every State to respect and observe them, are now reflected, *inter alia*, in the Charter of the United Nations, the Universal Declaration of Human Rights," etc.

¹⁶ See J. Carey, *UN Protection of Civil and Political Rights* 26-33, 95-126 (1970); see also Taubenfeld & Taubenfeld, *supra* note 9, at 487, 499-505; Richardson, *supra* note 15, at 94.

¹⁷ See generally M. McDougal, H. Lasswell & L. Chen, *supra* note 3, at 547-50, and references cited. See also Richardson, *Self-Determination, International Law and the South African Bantustan Policy*, 17 *Colum. J. Trans. L.* 185, 190-95 (1978); Taubenfeld & Taubenfeld, *supra* note 9, at 499-505; Paust, *International Law and Control of the Media: Terror, Repression and the Alternatives*, 53 *Indiana L. J.* 621, 633-40 (1978), and references cited.

¹⁸ On the authoritativeness and legal utility of the Universal Declaration, see, e.g., M. McDougal, H. Lasswell & L. Chen, *supra* note 3, at 272-74, 302, 325-30, and references cited; Paust, *Book Review, Human Rights: From Jurisprudential Inquiry to Effective Litigation*, 56 *N.Y.U. L. Rev.* 227, 228-30, 233-37, 241, 244, 257 (1981), and references cited; Paust, *Transnational Freedom of Speech: Legal Aspects of the Helsinki Final Act*, 45 *L. & Contemp. Probs.* 53 n.3 (Duke Univ. 1982).

¹⁹ See note 2 *supra*.

²⁰ See Western Sahara Advisory Opinion, [1975] I.C.J. Rep. 12, 31-33, 36, citing several international instruments including the authoritative Declaration on Principles of International Law, U.N. G.A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

²¹ *Id.* at 32, para. 55.

²² See Paust, *The Human Right to Participate in Armed Revolution and Related Forms of Social Violence: Testing the Limits of Permissibility*, 32 *Emory L.J.* 545, 562-3 (1983), and references cited. Here, I borrow several points from that study.

²³ See *id.*

²⁴ See *id.* at 564-66.

²⁵ See generally *id.* at 560-66. See also Declaration of the Seminar on the Legal Status of the Apartheid Regime and Other Legal Aspects of the Struggle against Apartheid, 13-16 Aug. 1984, at 5 (organized by the United Nations Special Committee Against Apartheid) ("Only the creation of a non-racial democracy based on the will of the majority of the population can introduce the element of legitimacy presently lacking").

²⁶ See *id.* at 560-67, and references cited.

²⁷ See, e.g., Paust & Blaustein, *supra* note 14, at 11-12 n.39, 19-20 n.69, and references cited; see also *id.* at 30-31. In the case of South Africa and Namibia, the U.N. Security Council has, at least since 1971, called on "all States to support and promote the rights of the people of Namibia" to self-determination, and the General Assembly has requested "all States . . . to render to the Namibian people all moral and material assistance necessary to continue their struggle for the restoration of their inalienable right to self-determination. . . ." See U.N. S.C. Res. 301, 26 U.N. SCOR, Res. and Dec., at 7 (1971); U.N. G.A. Res. 2871, 26 U.N. GAOR, Supp. (No. 29) 105, U.N. Doc. A/8429 (1971). Further, the General Assembly has sought to assure "effective political, moral and material assistance to all those combatting policies of apartheid." U.N. G.A. Res. 2202A, para. 5(c), 21 U.N. GAOR, Supp. (No. 16) 20, U.N. Doc. A/6316 (1966); see also M. McDougal, H. Lasswell & L. Chen, *supra* note 3, at 553-54, and references cited; U.N. G.A. Res. 183 J, K&L, 33 U.N. GAOR (24 Jan. 1979) (part J: U.N. G.A. authorizes the Special Committee against Apartheid "(f) To promote assistance to the oppressed people of South Africa and their liberation movements. . . . [vote: 124-0-4]; part K: recognizes "the need for increased international assistance. . . . [in the] struggle for the eradication of apartheid and the establishment of a non-racial society. . . . [in the] struggle for the eradication of apartheid and the establishment of a non-racial society. . . . [and] 1. Appeals to all States to provide . . . all assistance required by the South African national liberation movement in its legitimate struggle for the exercise of the right of self-determination by the people of South Africa as a whole" [vote: 115-0-12]; U.N. G.A. Res. 2, 39 U.N. GAOR (28 Sept. 1984) ("7. Urges all Governments and organizations . . . to assist the oppressed people of South Africa in their legitimate struggle for national liberation") (vote: 133-0-2); Declaration of the Seminar on the Legal Status of the Apartheid Regime and Other Legal Aspects of the Struggle Against Apartheid, *supra* note 25, at 8 ("right to seek and obtain assistance in the exercise of the right to self-defense against the international crime constituted by the denial of self-determination and the criminal nature of the apartheid system. The Seminar drew attention to the fact that States have the legal right to provide all forms of assistance. . . .").

²⁸ See also Richardson, *supra* note 15, at 94 (an "illegal-albeit recognized-regime"); Butcher, *supra* note 3; U.N. S.C. Res. 554 (17 Aug. 1984) (so-called new constitution of South Africa is null and void); U.N. G.A. Res. 2, 39 U.N. GAOR (28 Sept. 1984) ("recognizing the legitimacy of their struggle to eliminate apartheid and establish a society based on majority rule with equal participation by all the people of South Africa . . .," "1. Reiterates its rejection of the so-called 'new constitution' as null and void") (vote: 133-0-2); U.N. G.A. Res. 183 L, 33 U.N. GAOR (24 Jan. 1979) U.N. G.A. "1. Strongly condemns the illegitimate minority racist regime of South Africa for its criminal policies and actions. . . . 3. Reaffirms the legitimacy of the struggle . . . by all available and appropriate means, including armed struggle—for the seizure of power by the people. . . ." [vote: 103-9-17]; Declaration of the Seminar on the Legal Status of the Apartheid Regime and Other Legal Aspects of the Struggle against Apartheid, *supra* note 25, at 2, 4-5, 11 ("total illegitimacy of the new constitutional arrangements." G.A. had recognized that "the regime lacked legitimacy." "legitimacy presently lacking," "international illegitimacy").

²⁹ See also Paust, *supra* note 17, at 628-29, 633-40 (South African government violates human rights to freedom of speech, association and political participation without possible compliance with Article

29 of the Universal Declaration); Paust, *Political Oppression in the Name of National Security: Authority, Participation, and the Necessity Within Democratic Limits Test*, 9 *Yale J. World Pub. Ord.* 178 (1982); Paust & Blaustein, *supra* note 14, at 30-31 (use of force to deprive a people of the right to self-determination violates Article 2(4) of the U.N. Charter and constitutes a crime against peace); Declaration of the Seminar on the Legal Status of the Apartheid Regime and Other Legal Aspects of the Struggle Against Apartheid, *supra* note 25, at 13 (U.N. G.A. and S.C. have "clearly established that the illegal status of the occupying Power [in Namibia] denied that Power the automatic right of self-defense").

INTERIOR APPROPRIATIONS BILL

Mr. LAXALT. Mr. President, the Interior appropriations bill provides \$7,500,000 for national water resources research, some \$5 million above the President's request for the Water Resources Research Act of 1984. Since the enactment of the original bill in 1954, the Water Research Institutes have been engaged in needed research and training programs. As provided in the 1984 act, each of the Water Research Institutes are undergoing a careful and detailed evaluation. This first evaluation is to be completed within 2 years and subsequent reevaluations will be undertaken at intervals not to exceed 4 years.

While the institute program has produced significant research results, it is now time to build upon this base. The additional funding for section 105 can best be utilized to address topical research areas to be defined by the U.S. Department of the Interior with research programs carried out by Water Science Centers which, to the extent possible, would take advantage of this base of existing Water Resources Research Institutes.

Developing practical technology and adopting rational public policy to mitigate water problems of the coming decades will demand that the Nation's best scientific and engineering expertise be focused on the solution of all dimensions of the problem. This will require the development, synthesis, and integration of information from a host of water-related disciplines ranging from the highly technical fields of theoretical hydrology and engineering systems analysis to the fields of law, economics, and other social sciences.

Meaningful integration of research findings from these diverse disciplines is rare, and significant research contributions to the solution of real problems comes from a relatively few people. The present practice of Federal agencies funding small individual research projects for short periods of time has produced many fine studies and has trained future generations of many young professionals. The effectiveness of this approach can be significantly enhanced and complemented by coupling it with Water Science Centers that would synthesize research findings in a coherent whole.

The establishment of these centers would overcome some of the difficulties in water research identified by the Office of Technology Assessment and the Council on Environmental Quality Study.

These centers comprised of an interdisciplinary mix of a critical mass of scientists and engineers would provide the institutional setting necessary for real research coordination and integration. Centers devoted to selected water problem areas would provide the needed focus, continuity, and mix of expertise to maximize the return of scarce Federal research dollars.

GRAMM-RUDMAN

Mr. RIEGLE. Mr. President, over the past several weeks I have come to the floor to share with my colleagues editorials from our Nation's newspapers and magazines on the Gramm-Rudman proposal. Continuing that effort, I want to bring to everyone's attention an article, on this morning's Washington Post editorial page, by Alan S. Blinder, a professor of economics at Princeton University who is currently a visiting fellow at the Brookings Institution.

Professor Blinder outlines a hypothetical, although frighteningly realistic, scenario of the potential outcome of enacting what he calls "the Gramm-Rudman Act of 1985." I urge all of my colleagues to take the time to read this perceptive article, entitled "Life After Gramm-Rudman: Up To, and Including, the Impeachment."

Mr. President, I ask unanimous consent that the article just mentioned by printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LIFE AFTER GRAMM-RUDMAN

WASHINGTON, Sept. 1, 1986.—The Congressional Budget Office and the Office of Management and Budget today issued a joint forecast that makes the recently passed budget for fiscal year 1987 illegal. The forecast estimates a \$201 billion deficit for FY 87. Since balanced-budget legislation passed last year allows only \$144 billion, sharp reductions in government spending are required.

Automatic spending cuts of \$57 billion will be triggered in mid October unless Congress and the president act before then. The cuts will consist mainly of equal percentage reduction in the parts of the budget classified as "relatively controllable." Since these items make up only 40 percent of the FY 87 budget, spending in this part of the budget must decline by 13.2 percent. Senior OMB officials expressed doubts that such severe cuts could be implemented by Oct. 15.

WASHINGTON, Oct. 15, 1986.—Owing to the budget impasse between the president and Congress, automatic, spending cuts under the Gramm-Rudman Act of 1985 will take effect immediately, the White House announced today.

"The president regrets that this drastic action could not be avoided," said spokes-

man Larry Speakes. "He is particularly worried that sharp cuts in the defense budget will impair military readiness." Aides said Defense Secretary Caspar Weinberger was fuming over the required cutbacks.

FORT BRAGG, KY., Oct. 17, 1986.—Paymaster Sgt. Bill Coe had never seen anything like it. Today, 13 percent of the pay envelopes he distributed to Fort Bragg's personnel included something unheard of in the military: pink slips.

Fort Bragg and other military installations have orders from the Pentagon to reduce payrolls by 13 percent without cutting wages. "This is the damndest thing the Army has ever asked me to do," exclaimed Coe, who has seen combat but has never been in a budget war before. "The guys think it's a joke."

LOS ANGELES, Oct. 17, 1986.—The check she picked up at the welfare office this morning was 13.2 percent smaller than the one she received last Friday, and Mary Howell wanted to know why. "Orders from Washington," answered clerk Scott Williams. "Some kind of crazy new law. I don't really understand it."

WASHINGTON, Jan. 28, 1987.—The Reagan administration has revised its economic forecast downward, and now expects a weak economy in 1987. Economists say the main reason for greater pessimism is last fall's drastic round of cuts in government spending.

WASHINGTON, Feb. 4, 1987.—President Reagan stunned Congress today by submitting a budget that would cripple most civilian programs while leaving the military untouched. "The president regrets the deep cuts, but he felt he had no choice," explained spokesman Larry Speakes.

The Gramm-Rudman Act requires a deficit of \$108 billion for fiscal 1988—\$80 billion lower than the current projection. Only \$3 billion of this can come from cost-of-living adjustments. "Given the cuts the Defense Department absorbed last October, the president felt that further cuts in defense would jeopardize our national security," said Speakes. "So the whole \$77 billion must come from the civilian side of the budget."

Since discretionary nondefense spending for FY 88 is budgeted at \$240 billion, a reduction of \$77 billion requires a 32 percent cut. Congressional reaction to such large civilian cuts was vitriolic.

NEW YORK, Feb. 5, 1987.—The stock market plunged today on fears that the huge spending cuts proposed yesterday by the president might precipitate a deep recession. The dollar also tumbled on world markets. Senior officials at the Federal Reserve hinted that monetary policy may have to be tightened to defend the dollar, despite the weakening economy.

WASHINGTON, Aug. 15, 1987.—After months of bitter partisan wrangling, Congress adjourned today, unable to agree on a budget for the fiscal year that begins Oct. 1. Republican leaders were incensed. "The Democrats blocked action on the budget knowing that Gramm-Rudman would force large cuts in defense," fumed Sen. Robert Dole. "The president won't accept that. I don't know what happens now."

WASHINGTON, Sept. 1, 1987.—As required by law, CBO and OMB today issued their

joint forecast for the coming fiscal year. It projects a \$195 billion budget deficit under current programs, \$87 billion above legal limits. If Congress and the president fail to reduce the deficit to \$108 billion by Oct. 15, automatic spending cuts of \$87 billion will be triggered. The CBO estimates that \$47 billion will come from defense.

SANTA BARBARA, CA., Oct. 1, 1987.—President Reagan announced today that he would not abide by the provisions of the Gramm-Rudman Balanced-Budget Act of 1985 because "I cannot in good conscience weaken our defenses any further." The president's refusal to enforce the law precipitates the gravest constitutional crisis since Watergate.

"It is with a heavy heart that I do this," a grim-faced president told reporters as a hush fell over the packed briefing room. "Though I have sworn to uphold the law, my first responsibility is to the security of this great nation. I cannot allow our defenses to be gutted by a mechanical formula."

Members of Congress who did not wish to be identified speculated that impeachment proceedings might now have to be started. "Why didn't someone in December 1985 tell us this might happen?" moaned one Republican senator.

EDUCATIONAL AID

Mr. SIMON. Mr. President, on June 19, 1985, I introduced S. 1328, the Institutional Aid Act of 1985. A bipartisan group of 18 Senators have joined me in sponsoring this measure. Others have indicated their support for the basic thrust of the bill. S. 1328 would revise and extend title III of the Higher Education Act of 1965. Title III is the only title in the Higher Education Act which provides direct institutional assistance to smaller colleges and universities. Title III authorizes three separate programs—the Strengthening Institutions Program (part A) and the Special Needs Program (part B)—which vary on the basis of statutory eligibility criteria and the duration of grants made under each part. The part C, Endowment Grants Program provides matching Federal grants to assist in building institutional endowments.

I am proud to have been associated with the enactment of the Challenge Grant Act Amendments of 1983, which authorized Federal matching grants to assist title III eligible schools build their endowments. In my view, S. 1328 takes the next logical step in improving Federal assistance to the small colleges, especially private 4-year institutions and 2-year community colleges, which have little or no access to other Federal funding sources.

In an October 17 editorial "Drawing Lines," the Washington Post—after acknowledging the important role played by title III in assisting in the development of the Nation's historically black colleges and the declining proportion of title III funds received by these colleges—questioned the ap-

propriateness of "race specific" language in S. 1328. Christopher F. Edley, president and chief executive officer of the United Negro College Fund [UNCF], responded to that editorial. He makes an excellent case for why a program focused on the special needs of black colleges and universities. UNCF represents 43 historically black private colleges and is well known for its slogan "a mind is a terrible thing to waste." UNCF has been strongly supportive of the Black College and University Act established in S. 1328 and has done more than any one single organization to advance the cause of black colleges and higher education for black Americans.

Mr. President, as the Senate moves toward reauthorization of the Higher Education Act, I hope that my colleagues will review Mr. Edley's article and keep in mind the importance of black colleges and universities to higher education in America.

I ask unanimous consent that the December 2, 1985, Post article appear in the *RECORD* at this point.

There being no objection, the article was ordered to be printed in the *RECORD*, as follows:

[From the Washington Post, Dec. 2, 1985]

FOR BLACK COLLEGES

(By Christopher F. Edley Sr.)

Title III of the Higher Education Act was enacted in 1965 as a special program of financial assistance for "developing" institutions of higher education. The program was created primarily to aid historically black colleges and universities, which for decades were either excluded from federal and state aid programs or received substantially less public support than their white institutional peers. "We conceived it primarily to strengthen the Negro colleges in the South," wrote Rep. Edith Green in testimony presented in 1966.

The authorized program has never been fully funded, and the majority of the dollars in the limited appropriations were siphoned off to white colleges. During the first 10 years of Title III, historically black colleges received between 50 to 60 percent of the total appropriation. But pressure mounted to expand eligibility, and in 1984 only 34 percent of Title III support went to historically black colleges.

Private black colleges, which have survived on sacrifice and leftovers, can least afford reductions in financial support. These institutions are already asked to do more with substantially fewer resources than their counterparts nationally. Endowments per student at private black colleges are less than half the average for private colleges nationally. Over 90 percent of private black college students receive financial aid. Tuition costs at black colleges are two-thirds and faculty salaries are three-fourths of the national average for private colleges. Nevertheless, public and private black colleges award 40 percent of the undergraduate degrees earned by blacks nationally.

Title III funds are crucial to the survival and strengthening of the historically black colleges. Accounting for 5 to 10 percent of the operating budgets of these institutions, Title III makes possible on black college campuses the growth and development experienced by majority white campuses.

Rep. Augustus Hawkins (D-Calif.), chairman of the House Education Labor Committee, and Sen. Paul Simon (D-Ill.) are sponsoring a bill—The Post faulted it in its editorial "Drawing Lines" of Oct. 17—that would fund specific programs over a 10-year period to help black colleges improve their facilities, strengthen their management systems and develop new curricula. This proposal establishes subdivisions that reserve certain sums for minority colleges and universities. Therein lies the critical issue—is it wrong to use race-specific language to redress racial imbalances?

If we were living in a racially neutral society, we would have no use for racial classifications. The fact is that for more than 100 years historically black colleges were isolated from mainstream public support. There is no racially neutral process to redress that fact. The burden of more than a century has not been lifted in just the past two decades since the Developing Institutions Program began.

Is the predominant race of an institution permissibly a factor to look at in terms of targeting scarce public dollars? Consider a few questions that raise this issue. Have not black institutions gone through something extra to get where they are today? Do the black colleges not bring to learning a different and needed perspective?

Is there not a special need for more black doctors, lawyers, engineers and teachers? Does the whole society somehow benefit because these colleges elevate poor black youth to productive and creative citizenship?

There are no easy answers to these questions. If the answer to all or any is yes, then a classification based on race should be reasonable, purposeful and permissible. To answer all in the negative would be difficult, given our present state of education and experience. Yet that is precisely what opponents of race-specific language would require.

If nonracial euphemisms, such as "developing" or "struggling colleges," are used to avoid race-specific language, other nonblack institutions will gobble up the resources as in the past, leaving the black colleges to limp along. This is inefficient and requires the government to expend \$3 to deliver \$1 to the black colleges. Moreover, these needy institutions can ill-afford to have their unique historical missions and hard-earned achievements lumped with other colleges with strong but substantially different claims for support.

The whole history of the Developing Institutions Program indicates that without a racial classification, black colleges, the very institutions Title III was primarily created to strengthen, receive substantially fewer funds. Why must we do indirectly and ineffectively through euphemisms what we can do directly by providing direct assistance to our nation's historically black colleges and universities? But noble and racist arguments to avoid racial classifications threaten to homogenize us to death.

CONGRESSIONAL CALL TO CONSCIENCE FOR SOVIET JEWS AND CHRISTIANS

Mr. CRANSTON. Mr. President, today I would like to focus the attention of my colleagues on the plight of millions of people who live under the shadow of Soviet religious oppression. The suffering of Soviet Jews and

Christians, although well known to us, cannot be overemphasized. Vigilance and determination on the part of those who have the freedom to act are essential to help ensure that these people are not forgotten. I am therefore pleased to join with my colleagues in the Congressional Call to Conscience for Soviet Jews and Christians, which serves as a reminder of the deplorable situation confronting many Soviet religious believers. We must not allow concern for their plight to be eclipsed by other developments or issues in the United States-Soviet relationship. We must emphasize to the Soviet leadership the concern Congress feels and the great importance Congress places on this issue when evaluating relations between our two countries.

Soviet Jews are routinely denied the freedom to enjoy the most fundamental human rights. They are denied the right to cultural expression; they are harassed, fired from their jobs, and are subject to arbitrary arrest, imprisonment, and internal exile—only for trying to keep their religious and cultural heritage alive. And then, they are denied permission to emigrate from a country which treats them as outcasts. The number of Jews allowed to emigrate has precipitously declined over the last 6 years. Only 499 exit visas were granted to Soviet Jews in the first 6 months of this year. Thousands more wait years for a visa, only to be denied one for spurious reasons. In addition, untold numbers of Jews and other oppressed minorities fear to apply for emigration because of the severe consequences of filling out such an application.

It has been 10 years since the signing of the Helsinki Final Act. Yet the past decade has seen not an improvement, but a worsening of the Soviet treatment of Jews and Christians. The dismal Soviet record on this human rights issue makes a mockery of their professed support of freedom of religion as expressed by the Helsinki accords, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights, and even by the Soviet constitution. Americans have been forced to listen to the outrageous assertion that Jews enjoy full rights and privileges in the Soviet Union. We have heard the ridiculous argument that all Jews who wish to emigrate have already done so. Such absurd statements only highlight the fact that we are witnessing an official Soviet campaign to stamp out a Jewish cultural revival in the Soviet Union.

Human rights abuses in the U.S.S.R. take other forms besides the virtual halt of emigration, the imprisonment of refusniks, and the attempt to eliminate Jewish culture. Some Soviet Jews

must endure constant surveillance and harassment. Yakov Gorodetsky is a former mathematics teacher from Leningrad who has been teaching Hebrew since he was fired for having applied to emigrate in 1979. He has been at the forefront of the campaign to obtain the rights guaranteed by Soviet and international law. Mr. Gorodetsky has been repeatedly interrogated by the KGB, detained, and confined to his house. Last May he was ordered to report for the draft even though papers showed he was exempt due to poor eyesight. Early this fall the nationally read Soviet magazine, *Ogonek* denounced him as a "zionist functionary." Such public denunciations encourage yet more pressure and make life unbearable. I strongly urge Soviet leaders to allow Yakov Gorodetsky to emigrate to Israel with his wife, Polina, and 3-year-old daughter, Esther.

A move on the part of the Soviet Union to eliminate the brutal treatment of Soviet Jews and Christians—to allow them to practice and teach their religion and preserve their cultural heritage, to grant them the freedom to emigrate to a land which gives them this freedom—would mark a major step forward in lessening tensions between the United States and the Soviet Union. Before last month's summit meeting, I initiated a request to President Reagan, cosigned by 89 of my colleagues in the Senate, to ask the President to bring up the issue of Jewish emigration and human rights when he met with Mr. Gorbachev. While it is too soon to determine whether those discussions will produce any progress in this area, I deeply hope that Soviet General Secretary Gorbachev will take advantage of this opportunity to inaugurate a new era in United States-Soviet relations.

Now is the time to redouble our efforts on behalf of Soviet Jews and Christians. We must do everything in our power to demonstrate our solidarity with oppressed Jews and Christians in the Soviet Union. We must not let the Soviet Government assume that the plight of these people goes unnoticed or is forgotten in the West.

America has long been a symbol of freedom for the oppressed peoples of the world. It is vital that we continue to reaffirm our commitment to Soviet Jews and Christians and to fight Soviet tyranny over those who wish to practice their religion freely.

PASSAGE OF H.R. 3003— MARYLAND LAND CONVEYANCE

Mr. MATHIAS. Mr. President, last night the Senate passed H.R. 3003. Senator McClure and Senator Wallop, and the members of the Committee on Energy and Natural Resources, are to be congratulated for bringing this bill before us promptly.

As you may know, my colleague from Maryland, Senator Sarbanes, and I introduced a companion bill, S. 1208, which was the subject of hearings before the committee on July 12 of this year. However, prior to markup of S. 1208, the House enacted H.R. 3003 which was taken up by the committee and favorably reported with technical amendments.

Briefly, this legislation transfers from the Department of the Interior to the Maryland-National Capital Park and Planning Commission a small and unique piece of property located in Prince Georges County, MD, adjacent to the intersection of the Capital Beltway and I-295, near Woodrow Wilson Bridge. The 55-acre parcel of land was originally acquired by the Federal Bureau of Roads for the construction of the beltway as well as the proposed extension of I-295 which, as you know, have never been completed. In 1978, the land was transferred to the Department of the Interior with the condition that it be held as open space. However, the Department never developed a plan, nor programmed funds for the use of this property. In fact, at this time, the Department does not anticipate having the budgetary capability within the foreseeable future to develop a park at this location.

The Maryland-National Capital Park and Planning Commission [MNCPPC], a bicounty park authority for Prince Georges and Montgomery Counties, is anxious to put the land to constructive use. It wants to use it to develop a waterfront park for the public and to provide access to a proposed waterfront development. This land transfer legislation before us today will allow that to happen.

The proposal for the development, a multimillion dollar project, includes a marina, a trade center, homes, retail shops and boutiques. It will be an economic boon to Prince Georges County and the entire State of Maryland.

At the request of the Maryland-National Capital Park and Planning Commission, the Prince Georges County executive and State representatives, I introduced legislation in the 98th Congress to authorize the transfer. However, at that time, several concerns were raised by the National Capital Planning Commission and the National Park Service regarding the protection of Federal interests at this unique gateway location on the Potomac River. In response to these concerns, the developer of the adjacent property entered into extensive negotiations with the National Capital Planning Commission. The result is a memorandum of understanding between the parties containing numerous restrictions on the private development in exchange for NCPC and Park Service support of this legislation. This memorandum has been incorpo-

rated into H.R. 3003 and S. 1208, which I and my colleagues from Maryland in both the House and the Senate reintroduced this year.

As a result of this agreement, I am confident that this legislation not only protects but enhances the Federal interests along the Potomac shoreline. In exchange for the access to be provided to the adjacent private property, the bill requires substantial restrictions on the private development including limitation on the heights of buildings, limitation on fill along the Potomac shoreline, minimum open space, as well as the provision of a public hiker/biker trail extending along the length of the private shoreline property. This trail will connect with parkland located both to the north and south of the private property.

The Maryland Park Agency proposes a complementary and connecting hiker/biker trail, arboretum, and fishing and boating activities in its conceptual plan for the proposed park. The result will be a magnificent waterfront park and recreation area which will benefit not only the people of Prince Georges County but the residents of the entire National Capital Region as well.

POSSIBLE AMENDMENTS TO TITLE X, PUBLIC HEALTH SERVICE ACT

Mr. CRANSTON. Mr. President, on October 21, during consideration of the Labor, HHS, and Education Fiscal Year 1986 appropriation bill, H.R. 3424, the distinguished Senator from Utah [Mr. Hatch] indicated that he and others intended to propose a series of amendments to the provisions of the bill providing appropriations for the family planning program carried out under title X of the Public Health Service Act. Title X provides the major source of Federal support for domestic family planning programs. That issue was temporarily deferred when the appropriation for the title X program was deleted from H.R. 3424. Funding for the title X program is currently provided for under the continuing resolution, Public Law 99-154, which expires next week on December 12. The authorizations of appropriations for the title X program expired on October 1.

Mr. President, at the time that all funds for the title X program were deleted from the fiscal year 1986 appropriation bill, an exchange took place between the Senator from Utah [Mr. Hatch], the chairman of the Labor and Human Resources Committee, and the Senator from Connecticut [Mr. Weicker], the chairman of the Labor, Health and Human Services, Education and Related Agencies Appropriations Subcommittee, as follows:

Mr. HATCH. Mr. President, one of my colleagues, Senator WEICKER, in particular, has asked me if we in the Labor and Human Resources Committee will be marking up the reauthorization of title X before the end of this year. I fully intend to see that that opportunity does occur in the committee and that we will have that opportunity of debating these matters at greater length at that particular time.

Mr. WEICKER. Mr. President, I thank my colleague from Utah for his comments. I believe especially important to note here, as a matter of procedure, is that hearings will be held on the reauthorization of title X within his committee. That is the place to debate this matter. (*Cong. Rec.*, daily ed., October 21, 1985, S13655).

As one of the original cosponsors of legislation, S. 881, to extend the authorization of appropriations for the title X, which has been pending before the Labor and Human Resources Committee since last spring, I was pleased to learn of the commitment of the Senator from Utah to allow the authorizing committee to consider the reauthorization legislation. S. 881 has now been sponsored by 37 Senators, from both sides of the aisle and with differing perspectives on the issues of abortion.

As of this date, however, to my knowledge, no hearings have been scheduled on the reauthorization of title X and the Labor and Human Resources Committee has not been permitted to vote on S. 881, although an effort was made by several members of the committee to have the title X reauthorization considered at the beginning of the committee's meeting on November 19.

I strongly believe that the type of amendments described by the Senator from Utah should be considered by the authorizing committee—the Labor and Human Resources Committee—rather than proposed as riders to open an appropriations bill on the Senate floor. However, the possibility clearly remains that an attempt may be made to bypass consideration by the authorizing committee—and its probable repudiation of these crippling amendments—by seeking to attach these amendments to the continuing resolution on the Senate floor.

Because these amendments may come before the Senate without a great deal of notice or opportunity for debate, I intend to make several statements, in advance of floor consideration of the continuing resolution, in order to explore the serious adverse potential impact of such amendments.

THE TITLE X PROGRAM

Mr. President, before discussing the specific amendments, it may be useful to describe the title X program itself.

Title X was enacted in 1970 as part of the Family Planning Services and Population Research Act, Public Law 91-572. Its purpose, clearly set forth in section 2 of the act, was, among other things, to "assist in making comprehensive voluntary family planning

services readily available to all persons desiring such services." Section 6 of the 1970 law added a new title X to the Public Health Service Act. The provisions of title X authorized a variety of activities to be carried out relating to the provision of family planning services including direct service project grants, training programs, educational and information activities, and research into contraceptive development and program implementation. In the 1981 Omnibus Budget Reconciliation Act, Public Law 97-35, the separate authorization of appropriations in section 1004 of title X for research activities was repealed; the joint explanatory statement of the committee of conference accompanying the conference report, however, made it clear that the repeal of the separate authorization was not intended to terminate the research being carried out at NIH under the authority of section 1004, but rather it was the intent of the conferees that such activities would henceforth be authorized under the broad authority of sections 301 and 441 of the Public Health Service Act.

Although title X has thus authorized a variety of activities to be carried out relating to family planning, the service grant program carried out under section 1001 is generally thought of as constituting the primary title X program. Grants are made to public and private nonprofit entities to establish and operate voluntary family planning projects. According to the HHS testimony submitted in hearings on March 27, 1985, before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce, in fiscal year 1984, \$133.8 million was distributed to 89 grantees that provided services at over 4,500 clinic sites to an estimated 3.9 million persons, about a third adolescents. HHS witnesses testified that 90 percent of the women served under title X in 1984 had incomes below 150 percent of poverty.

Mr. President, it is extremely important to note that the majority of title X grantees are public health clinics. Health departments served 40 percent of the title X patients; Planned Parenthood affiliates served 28 percent; hospitals, 11 percent, and a variety of other agencies, such as neighborhood health centers and community action agencies, served 21 percent.

TITLE X—AN EFFECTIVE ALTERNATIVE TO ABORTION

Mr. President, since its inception 15 years ago, title X has enjoyed strong bipartisan support. It has also enjoyed strong support from individuals with differing views on the issue of abortion, principally because most people clearly understand that one of the most effective ways to reduce the tragic number of abortions in this country is to make family planning services readily available in order to

help individuals to avoid unintended pregnancies which can end in abortion.

More than a decade ago, a witness testifying before my subcommittee on the 1973 reauthorization of appropriations for title X stated the relationship between title X and prevention of abortion in eloquent terms:

Laws against abortion have never stopped them from occurring. A constitutional amendment won't stop them from occurring. The Congress can demonstrate the sincerity of opposition to abortion by investing more effort and more money in contraceptive research. Improved contraceptive technology, improved availability of information and family planning service are the best means to reduce demand for abortion.

Testimony of Grace Olivarez before the Special Subcommittee on Human Resources, Committee on Labor and Public Welfare, 93d Congress, first session.

According to data published by the Alan Guttmacher Institute, more than 800,000 unintended pregnancies—about half of them among teenagers—are averted in a typical year as a direct result of the title X federally funded family planning program. It is also estimated that if these unintended pregnancies had occurred, there would have been an estimated 433,000 more abortions in each such year.

Mr. President, because I strongly believe that family planning services are one of the most effective means to reduce the number of abortions and because I believe that individuals ought to have the right to have access to these preventive services, I have consistently supported title X and have opposed efforts to weaken it. Undermining the title X program and the network of family planning clinics throughout the Nation would simply make it more difficult for individuals to have access to these important services. This in turn could have only one result: more abortions—a tragic result from every perspective.

KEMP-HATCH AMENDMENT RELATING TO ABORTION

Mr. President, although it is possible that a whole series of crippling amendments may be offered to the title X appropriation, most of the attention in recent weeks has focused upon the so-called Kemp-Hatch amendment. The exact wording of this proposed amendment remains unclear. In his statement on October 21, the Senator from Utah indicated that his proposed amendment would provide first, that no title X money could be used for abortion referral or counseling except in cases in which the mother's life would be endangered by carrying the pregnancy to term, and second, that no title X funds could be awarded by grant or contract to any organization involved in abortion. On November 6, the Senator from Utah circulated a "Dear Colleague" letter which con-

tained a proposed text of the amendment which included both of the provisions described in the October 21 statement. However, to date, no amendment has actually been introduced in the Senate. The effort of Congressman KEMP to attach a somewhat modified version of the Kemp-Hatch amendment to the continuing resolution during the House Appropriations Committee consideration of the continuing resolution failed decisively and the House has passed a continuing resolution without any amendments to the title X appropriation.

ORIGINAL INTENT OF TITLE X

Mr. President, during the remarks of the Senator from Utah on October 21, the statement was made that the amendments he was preparing were designed to preserve the original intent of title X.

As one of the original cosponsors of the 1970 legislation which established the title X program, Public Law 91-572, as the chairman for 10 years of the subcommittee on the Labor and Human Resources Committee which had jurisdiction over the program, and as the Senate author of all of the title X legislation enacted during that period of time, I believe that I can shed some historical light on certain issues relating to the original intent of title X.

The fact is that the legislative history of section 1008 is absolutely clear that the language contained in that section was intended to prohibit the use for abortions of only the fund provided under title X.

Mr. President, the November 6 letter correctly sets forth the text of section 1008 of title X which provides:

None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

However, the November 6 letter fails to acknowledge the explicit statement contained in the Statement of the Managers accompanying the conference report on S. 2108 (H. Rept. No. 91-1667) relating to the intent of this provision, as follows:

It is, and has been, the intent of both Houses that the funds authorized under this legislation be used only to support preventive family planning services, population research, infertility services, and other related medical, informational, and educational activities. The conferees have adopted the language contained in section 1008, which prohibits the use of such funds for abortion, in order to make clear this intent. The legislation does not and is not intended to interfere with or limit programs conducted in accordance with State or local laws and regulations which are supported by funds other than those authorized under this legislation. (H. Rept. No. 91-1667, p. 8.)

There may be disagreement as to whether that should be the policy or whether it should be changed. But it is totally erroneous to suggest that the proposed amendment would somehow clarify or carry out the original intent

of section 1008. It would flatly reverse the explicit policy set forth by the conferees that the restrictions in section 1008 were "not intended to interfere with or limit" lawful activities carried out with other sources of funds.

Second, Mr. President, in the November 6 letter and the October 21 statement, identical statements—supporting the thrust of the proposed amendment—are cited as having been made by two different key House Members.

The November 6 letter states that the intent of section 1008 can be "clearly understood from the writings of Congressman PAUL ROGERS, chairman of the Health and Environment Subcommittee and primary author of the title X program." The letter purports to quote Representative ROGERS, without any citation to a source, as having written that title X "would not merely prohibit the use of such funds for the performance of abortion but would prohibit the support of any program in which abortion counseling or abortion referral services are offered."

Although Representative ROGERS later served as the chairman of the House Health Subcommittee for many years, he was not chairman of the subcommittee at the time title X was established nor was he the primary author of the 1970 legislation. As his statement in the CONGRESSIONAL RECORD of November 16, 1970, clearly indicates, he was at that time a member of the subcommittee which reported the legislation and a cosponsor of the legislation. Like myself, Representative ROGERS served as a member of the 1970 conference committee and subsequently became chairman of the authorizing subcommittee and the author of subsequent legislation extending the authorizations of appropriations for title X.

Moreover, Mr. President, nowhere in Mr. ROGERS' brief statement in support of the legislation in 1970 does the reference to title X and abortion counseling or referral attributed to him in the November 6 letter appear. He may have made such a statement at some later time but obviously, any such subsequent statement cannot in any way diminish the clear statement made by the 1970 conferees when section 1008 was enacted.

Curiously, Mr. President, in his October 21 remarks, the Senator from Utah attributed exactly the same statement to Congressman JOHN DINGELL. No such statement, however, appears in the remarks made by Mr. DINGELL on November 16, 1970, although Mr. DINGELL did address extensively the issue of abortion and was the author of section 1008. None of the statements made by Mr. DINGELL at the time of House consideration refer directly to the issue of abortion counseling or referrals. Mr. DINGELL

did make a statement indicating he believed that programs which include abortion as a method of family planning are not eligible for funds allocated through title X. However, to the extent that this statement flatly contradicts the contrary, explicit expression of the intent of the conferees in the statement accompanying the conference report, that statement is not controlling legislative history under well-established rules of statutory construction.

Moreover, elsewhere in his statement on November 16, 1970, Representative DINGELL referred to the provisions of S. 1008 as restricting the use of appropriated funds for abortions. Several other House Members also referred to section 1008 in similar terms indicating that the prohibition applied to the use of Federal funds for abortions, not a prohibition on activities carried out with non-Federal funds. That has been the consistent interpretation of section 1008 for the past 15 years.

Mr. President, in recounting these facts from 1970, I am not attempting to present an exhaustive legal argument based on legislative history nor to suggest that the policy issues raised by the amendments' proponents should be disposed of on the basis of whether or not one or the other House Member referred to ever actually made the statement quoted in the November 6 letter or the October 12 statement.

However, these statements and their apparent lack of accuracy or at least relevance are important in the current debate because they appear to be part of an attempt to portray the proposed amendments as merely clarifying the original intent of title X—hence, implying that by-passing the authorizing committee process would not be the radical procedure that it actually would be in this case.

Mr. President, these are major amendments intended to overturn policies established 15 years ago and they raise the types of issues that deserve careful and thorough examination through the congressional hearing process and committee deliberation. They do not belong on a continuing resolution, particularly in light of the fact that the chief Senate proponent is the chairman of the authorizing committee and has had ample opportunity to have his amendments considered by that committee.

GAO REPORT

Mr. President, similar problems appear in the November 6 letter with respect to references made to the 1982 GAO report on compliance with section 1008 by family planning grantees.

The November 6 letter refers to the GAO investigation of title X grant recipients requested by Senator DENTON and Senator HATCH in 1981 and states

that at the conclusion of their investigation:

GAO recommended that restrictions of abortion activities in family planning programs need clarification.

That is not a fair description of the GAO report released in September of 1982.

First, it should be noted that one of the principle focuses of the GAO investigation was to determine whether grantees were using title X funds for abortions or certain abortion-related activities or for lobbying. The conclusion GAO reached after its investigation was that it could find no evidence that title X funds have been used for abortions or to advise clients to have abortions.

Second, GAO concluded that if Congress did not want title X funds to go to organizations providing abortions, it should provide guidance to HHS to clarify such intent. GAO did not recommend such action to the Congress. Rather, GAO recognized that congressional action to change the provisions of section 1008 would be necessary to achieve the result sought by the Senator from Utah and the Senator from Alabama.

Third, and finally, GAO did recommend that HHS should set forth clear guidance on the scope of abortion restrictions in its title X program regulations and guidelines. Nowhere in the GAO report is it suggested that such guidance should come from Congress nor is it suggested that HHS lacks the authority to spell out its policies regarding abortion-related activities in title X regulations or guidelines. GAO expressed concern that HHS policies prohibiting activities which promote or encourage a favorable attitude toward abortion had not been incorporated into HHS regulations or guidelines, but rather were communicated to grantees through a series of HHS general counsel legal opinions which have been periodically disseminated in memorandums to its regional program administrators. GAO recommended that HHS incorporate these policies into its title X guidelines or regulations.

The Reagan administration has the discretion under title X to propose to incorporate these policies relating to abortion activities into the existing title X guidelines or regulations governing the use of title X funds by title X grantees. It is important to express one caveat here, however: These existing policies do not prohibit—as the Kemp-Hatch amendment seeks to do—making information available about abortions or referring persons to a place where they may receive more information about abortion or obtain an abortion. They do prohibit advocacy of abortion.

HHS REVIEWS

Mr. President, in addition to the GAO investigation which found no

evidence that title X funds were being used to pay for abortions or to advise clients to have abortions, the inspector general of HHS conducted a similar investigation of title X grantees and reached a similar conclusion. HHS Secretary Heckler, in her testimony in 1984 before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce, testified that since the time of the GAO report, there had been 32 inspector general audits of title X grantees and that:

The inspector general's findings clearly show that the family planning clinics have been very aware of and have honored the law in terms of the abortion prohibition. (Hearing before the Subcommittee on Health and the Environment, House Committee on Energy and Commerce, 98th Congress, 2d Sess., on Reauthorization of Title X, April 3, 1984, p. 472.)

Earlier this year, on March 27, 1985, HHS Acting Assistant Secretary for Health, Dr. James O. Mason, concurred with Secretary Heckler's 1984 statement in his testimony before the same subcommittee.

NO BASIS FOR ALLEGATIONS DOCUMENTED

Mr. President, despite the persistent allegations by the opponents of the family planning program, there is simply no evidence that title X grantees are violating the prohibition in title X against using title X funds for abortions; nor is there any evidence to support the contention that title X grantees encourage women to seek abortions. That was the conclusion reached by GAO after its extensive field investigation, that was the conclusion reached by the HHS inspector general, and that is the conclusion reached by the Reagan administration officials at HHS.

Finally, Mr. President, if any individual grantee is found to have violated these prohibitions, HHS has ample authority to take appropriate corrective actions, including grant termination.

ILL-CONCEIVED POLICY PROPOSED

Mr. President, up to this point, I have focused primarily on clarifying some of the factual issues relating to the title X program and its legislative history in order to stress the complexity and seriousness of the fundamental changes sought by the proponents of the Kemp-Hatch amendment. I would like to turn now to the substance of the proposed amendment itself, and explain why I believe the amendment would be so damaging and counterproductive.

PROHIBITION ON COUNSELING AND REFERRALS RELATING TO ABORTION

Mr. President, the existing title X program guidelines provide that:

Pregnant women should be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an unintended pregnancy are to be given non-directive counseling on the following alternative courses of action, and referral upon request:

prenatal care and delivery; infant care, foster care, or adoption; pregnancy termination.

The Kemp-Hatch amendment, as originally described by its proponents, would prohibit title X grantees from providing either counseling on, or referrals for, abortions to pregnant women—even those explicitly requesting information on the options for the management of an unintended pregnancy—except where the life of the woman was endangered. Not only would the amendment restrict title X programs themselves from engaging in these activities, the amendment would bar title X funds from being awarded to any organization or entity which provided such counseling or referrals with other sources of funds.

Thus, Mr. President, the Kemp-Hatch amendment would prohibit a title X grantee from advising a pregnant woman, even one who requested such information, that abortion was a legal option up to a certain point in the pregnancy or that the decision regarding abortion needed to be made within a certain timeframe.

If an IUD patient became pregnant, the patient and her physician could not discuss whether to terminate or continue the pregnancy, despite the increased risk of infection and spontaneous abortion, unless the patient's life were actually endangered.

A title X agency would be required to refuse to tell a patient where a legal and medically safe abortion could be obtained, forcing often desperate women to search out such facilities on their own without any information on the quality of care they might receive.

Mr. President, there is simply no question that this type of prohibition would raise very fundamental questions of medical ethics and medical malpractice issues. That is what the American College of Obstetricians and Gynecologists and numerous other health organizations have stated. It would violate one of the basic premises of the family planning program—that individuals seeking assistance be enabled to exercise informed consent when choosing a course of action. To mandate that title X grantees withhold information from a woman patient who does not wish to be pregnant is simply unconscionable. The current guidelines and practices in the title X program prohibit grantees from advocating or encouraging patients to seek abortions for unintended pregnancies, but they do not proscribe these medical providers from providing information on all of the legal options available to an individual with an unintended pregnancy.

Mr. President, the proposed amendment also, I believe, raises serious constitutional issues relating to freedom of speech. It would not only restrict the title X grantees with respect to

the use of title X funds, it would punish those organizations and entities which use other funding sources to support their exercise of freedom of speech by barring them from participating in title X funding. It is particularly unconscionable from a first-amendment perspective because it would punish only a particular kind of speech. Speech which advocated against abortion would be allowed, while even neutral discussion of the availability of abortion would be punished. This degree of intrusiveness into the right of private individuals in this country to speak and act according to their own convictions where no Federal funds are involved is extraordinary and, I believe, unprecedented.

Mr. President, from every respect, the Kemp-Hatch amendment represents a bad policy and a dangerous precedent.

PROHIBITION ON GRANTS TO HOSPITALS AND CLINICS WHICH PROVIDE ABORTION SERVICES

Mr. President, the second component of the Kemp-Hatch amendment would prohibit title X funds from going to entities which provide abortion services with non-title X funds. This provision would overturn the clear policy of the Congress enunciated when section 1008 was enacted, that the title X prohibition regarding abortion was not intended to interfere with lawful activities relating to abortion carried out with other sources of funds. I have already traced the legislative history of this policy.

According to the 1982 GAO report, approximately 74 organizations receiving title X funds also performed abortions at facilities colocated with their family planning program. Forty-six of these entities were hospitals, 21 were Planned Parenthood affiliates, 4 were other nonprofit organizations, and 3 were public health departments. No information was available on the number of family planning clinics that provided abortions at separate locations. Clearly, the major impact of this provision of the Kemp-Hatch amendment would fall upon these hospital-based programs. Excluding these facilities from the title X program would serve only to make it more difficult for the individuals, who rely upon the program for their family planning services, to receive these services. The result would be more, not less abortions. As the head of the Department of Obstetrics and Gynecology at Columbia University—a title X grantee—testified in the March 27, 1985, House hearing:

Insisting our hospital choose between continuing abortion service and receiving title X funds potentially could backfire on those most concerned about abortion and the prevention of abortion . . . it would be the poor women who would become the victims. Without access to family planning services, they would only be at greater risk of unintended pregnancy and abortion.

MODIFIED KEMP-HATCH ALSO UNACCEPTABLE

Mr. President, there is reason to believe that the proponents of the Kemp-Hatch amendment intend to modify the original proposal as described in the Senate on October 21 and set forth in the November 6 letter to eliminate the restriction on counseling and to allow title X funds to go to State agencies which provide abortions with State or other sources of funds. A modified amendment was offered by Representative KEMP unsuccessfully during the House Appropriations Committee's consideration of the continuing resolution, which would prohibit title X funds from going to any entity which provided for abortion referrals, with title X or other funds, and would allow only a State to receive title X funds if it provided abortions to low-income women with its own moneys. The House Appropriations Committee rejected this amendment in adopting a substitute which was designed to codify the existing policy in the HHS guidelines regarding nondirective counseling. However, as a result of the action of the House Rules Committee, this amendment was deleted from the continuing resolution passed by the House on Wednesday.

Although such a modification would remove one indefensible aspect of the original Kemp-Hatch proposal, it would still unduly interfere with and restrict information provided to title X clients and have the result of excluding large numbers of university-affiliated teaching hospitals from participation in the title X program. In many States, there is no State-operated title X program or the actual services are provided through nonprofit delegate agencies. In those States the effect of the amendment would be the same as the effect of the originally-described amendment. The modified amendment offered by Representative KEMP has the same basic flaws as the amendment described by the Senator from Utah on November 6 and October 21 and it also certainly should be dealt with first by the authorizing committee after adequate hearings.

CONCLUSION

Mr. President, over the past 15 years, the title X program has been tremendously effective in helping to avert unintended pregnancies and thereby reducing the number of abortions. The Senate, like the House, should firmly reject these efforts to undermine and cripple the title X program—efforts which would serve only to increase the number of abortions by increasing the number of unintended pregnancies.

UNDERSTANDING TOURETTE SYNDROME

Mr. STEVENS. Mr. President, each year the National Rural Letter Carriers' Association Auxiliary chooses a

humanitarian project. This year, auxiliary president Shirley McKamey has chosen to emphasize understanding and patience in dealing with those suffering from Tourette syndrome.

Tourette syndrome [TS] is a neurological disorder which manifests itself in involuntary movements and sounds. The symptoms usually begin in childhood and continue a lifetime. I applaud the auxiliary for choosing TS for their project. Greater awareness will lead to greater understanding, something all patients of TS desperately need.

I ask unanimous consent to have reprinted at the end of my remarks the entire text of the article, written by auxiliary board chairwoman Ruth Powers, which appeared in the National Rural Letter Carrier. It contains valuable information about Tourette syndrome which can be helpful to all.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WHAT IS TOURETTE SYNDROME?

(By Mrs. Harlow (Ruth) Powers, Auxiliary Board Chairwoman)

Our National Auxiliary President, Shirley McKamey, has chosen Tourette Syndrome, a condition commonly known as "Tics," as the humanitarian project for the "Program of Patience."

T.S. is a neurological disorder of the brain or a chemical abnormality in the neurotransmitter system, which regulates our movements and behavior. Symptoms usually begin between the ages of 2 to 16 and must be endured for a lifetime, increasing in severity as the person grows older. While there are some mild forms of the condition, most patients must suffer with the very severest kind of T.S.

Because there is still so much to be learned about the condition, we are anxious to support research and to raise the level of public awareness. The medical community also needs to be more concerned about the plight of these victims. Often, it takes years of struggle and financial burden for a family to achieve a correct diagnosis.

After many false leads, expensive tests, and stress on the part of both patient and family, the child is still often placed in an inappropriate educational setting, which leads to further problems. Children with T.S. have some very special classroom needs, even though they have normal intelligence.

Small classes, private study areas, exams given outside the regular classroom, or, in some cases, an oral exam can help meet these special needs. Time limits are very stressful on the child with Tourette Syndrome.

Imagine, if you will, what it would be like to be constantly blinking, shrugging your shoulders, making facial grimaces, or, in the worst cases, shouting obscenities, grunting, or barking. Can we even imagine what a day of this would be like? Can we visualize what fellow students, co-workers, or friends would think or say? How would we feel physically and emotionally at the end of the day?

Besides being exhausted from our body contortions, our feelings have been hurt a thousand times. We can only hope that sleep will bring a respite; knowing full well, that when we awake, we must face this all over again. Is it any wonder that suicide is

often the only means of escape for these children or adults? Is it any wonder that expensive psychotherapy is needed for many of them?

Some medications have been developed which do help certain patients, but some of the side effects are also very annoying; muscular rigidity, restlessness, fatigue, depression, weight gain, and difficulty breathing. Often the side effects are more troublesome than T.S.

There is a great need for understanding and patience with the victims of this affliction, and we can start by doing our little bit. We can contribute to the T.S. Association, which promotes research. We can show compassion and understanding when confronted with either a victim or someone who is having to deal with a victim.

Above all, we must do whatever is possible to make others aware of the suffering the T.S. patient must endure. We can "Sow Seeds of Usefulness." Kindnesses such as these are gifts we give ourselves. It is a little like jam, you cannot spread even a little without getting some on yourself. So let's spread a whole lot!

A MESSAGE FROM THE PRESIDENT OF THE TOURETTE SYNDROME ASSOCIATION

The Tourette Syndrome Association is the only voluntary agency in the world dedicated to preventing, controlling, and finding a cure for Tourette Syndrome, and to promoting the welfare of persons who have this disorder.

Tourette Syndrome is a neurological movement disorder which begins in childhood (between the ages of 2 and 16) and lasts throughout life. The syndrome is characterized by rapidly repetitive multiple movements called tics, and by involuntary outbursts of sound or vocalizations. Body tics may include rapid eye blinking, facial grimaces, shoulder shrugging, head jerking, or other repetitive movements of the torso or limbs. Vocalizations may include repeated sniffing, throat clearing, coughing, grunting, barking, and or coprolalia, the involuntary utterances of inappropriate or obscene words. These symptoms have long been misconstrued as a sign of behavioral abnormality or nervous habits, which they are not. They are, however, symptoms of a neurological disorder caused by a chemical imbalance in the brain.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is declared closed.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the hour of 10 a.m. having arrived, the Senate will now go into executive session to resume the consideration of the nomination of Robert K. Dawson, of Virginia, to be

an Assistant Secretary of the Army. The debate thereon is limited to 1 hour, with 45 minutes to be controlled by the Senator from Rhode Island [Mr. CHAFEE] and the Senator from Maine [Mr. MITCHELL] or their designees; and 15 minutes to be controlled by the Senator from Arizona [Mr. GOLDWATER] or his designee.

The Senate proceeded to the consideration of executive business.

DEPARTMENT OF DEFENSE

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I yield such time as is necessary to the Senator from Vermont.

Mr. STAFFORD. I thank the distinguished Senator from Rhode Island for yielding.

Mr. President, I wish to state my opposition to the confirmation of Robert K. Dawson to the post of Assistant Secretary of the Army—Civil Works.

Some of my colleagues may wonder why members of the Committee on Environment and Public Works are so interested in this nomination, which was reported from another committee.

The job of Assistant Secretary of Army—Civil Works—was established by section 211 of Public Law 91-611, a 1970 omnibus water resources law. That law came from our committee. When the first nominee was sent to the Senate 5 years later, the Parliamentarian, presumably looking only at the word "Army" and not at the legislative history, sent the nomination to the Committee on Armed Services, where it has gone by precedent ever since.

This job involves no military work. It carries two functions:

First. Overseeing the civil work of the Army Corps of Engineers, all of which is under the Environment Committee's jurisdiction, including the section 404 program. The military construction work of the corps comes under the Assistant Secretary of the Army for Installation and Logistics.

Second. Operating Arlington National Cemetery, which has an operating budget of some \$10 million, about one-third of 1 percent of the corps' civil works budget.

Thus, our committee has a vital interest in Mr. Dawson's nomination.

Frankly, Mr. President, my views on this nomination carry much ambivalence.

Mr. Dawson appears to have done a sound job running the traditional programs of the U.S. Army Corps of Engineers, programs for building and maintaining water resources projects.

As a matter of fact, I informed the White House on several occasions during the past year that I favored his nomination and encouraged his selection to this post. I supported the job he was doing as an advocate for the

President's program on cost sharing and other reforms in water resources development.

I continue to support that aspect of Mr. Dawson's responsibilities.

But I was wrong to assume that he also would do a good job with the corps' other major responsibility, the regulatory program to protect wetlands under section 404 of the Clean Water Act.

In recent months, I have come to hold great reservations over Mr. Dawson's qualifications because of his handling of this vital program. These reservations have grown to the point that I am now forced to oppose his confirmation.

Mr. President, it is now universally recognized that our Nation's dwindling wetlands are an extremely important national resource. It had been my hope that the Corps of Engineers had changed its old ways, that it had joined the national effort to protect and enhance our environment, as the law requires.

But hearings held by the Subcommittee on Environmental Pollution during the past few months have dispelled that hope. It now is clear that Mr. Dawson has failed to operate the wetlands protection program under section 404 of the Clean Water Act in a manner that comes even within whistling distance of that standard and the criteria in the law.

I want to make it clear at the outset that I do not expect Mr. Dawson or any other nominee to always agree with me on policy issues. I would not oppose a nominee solely on the basis of policy differences. But I do expect a nominee to implement and enforce the law as it is written, not as he wishes it were written.

Mr. Dawson has been in charge of the section 404 program for more than 4 years now, and he has built a record that can be evaluated on its merits. It is not a good record.

We now face the realization that Mr. Dawson is determined to impose on America his interpretation of the law. In this case, his interpretation is wholly unjustified. It is a very narrow interpretation of section 404 that is entirely inconsistent with congressional intent and judicial decisions.

Indeed, the record Mr. Dawson has made indicates that he has sought every opportunity to avoid regulation of wetlands filling wherever possible.

For example, Mr. Dawson argues steadfastly that the only people putting fill material in wetlands who need to apply for a 404 permit are those whose primary purpose is filling the wetland. Others who fill wetlands accidentally or to get rid of waste material are exempt from the section 404 permit requirements, according to Mr. Dawson.

Such a policy ignores the fact that regulation of wetlands filling under the Clean Water Act is based on the fact of depositing fill, not the intent of the person doing so.

For years, the Environmental Protection Agency has argued, correctly but unsuccessfully, that section 404 requires regulation of any material that fills a wetland, regardless of why it was dumped there. But Mr. Dawson has refused to agree to this logical definition of what constitutes fill material.

In the meantime, unregulated destruction of wetlands continues daily because of Mr. Dawson's cramped and narrow definition.

Mr. Dawson also refuses to provide clear and proper guidance to field personnel of the Corps of Engineers on the types of wetlands and wetland filling activities that are covered by the Clean Water Act.

Recent decisions by Mr. Dawson now jeopardize protection for hundreds of thousands of acres of what we know as "isolated wetlands." These valuable wetlands produce the majority of our Nation's migratory waterfowl.

Destruction of other valuable wetlands, our bottomland hardwoods, also proceeds largely unchecked under Mr. Dawson's restrictive interpretation of the waters and activities regulated under section 404.

Then there is the problem of enforcement. Mr. President, I am sorry to report that the section 404 enforcement program is in a shambles. During Mr. Dawson's tenure in the Assistant Secretary's office, a marked decline in the number of 404 enforcement actions brought by the corps has occurred. In some areas the corps has ignored repeated reports of illegal activities for several years.

Increasingly since 1982, the corps' response to illegal acts has been to give "after-the-fact" permits, which not only serves to reward unlawful acts but also forecloses enforcement penalties. More than half of all violations are condoned in this manner now.

I am also bothered greatly by Mr. Dawson's long reluctance to enter into a memorandum of agreement with the Fish and Wildlife Service and the Environmental Protection Agency over how to operate effectively the section 404 program.

I understand such an agreement has been reached finally with the Fish and Wildlife Service and EPA. This rather modest achievement was accomplished only after 6 months of intensive pressure by the Subcommittee on Environmental Pollution.

Under Mr. Dawson's guidance, the corps regulatory policies have deteriorated so badly that Assistant Secretary of the Interior Ray Arnett wrote in 1984: "The Army's regulatory program is so flawed, it is no longer a

usable tool to adequately protect wetlands."

Mr. President, I want to reiterate that my opposition to Mr. Dawson's nomination does not stem from policy differences. It rests instead on his resolute resistance to implementing the law as it is written.

During repeated hearings, the Subcommittee on Environmental Pollution urged Mr. Dawson to accede to the law. His response was evasion.

Despite these hearings, court rulings, settlements, and the legitimate concerns of other Federal agencies, Mr. Dawson has refused to change his interpretation of section 404.

Mr. President, wetlands are an important environmental resource. They need to be protected under section 404 of the Clean Water Act.

For an agency as important as the civilian arm of the Army Corps of Engineers to act otherwise is to frustrate the goals of the act.

Mr. President, I urge the Senate to reject the nomination of Mr. Dawson.

Mr. JOHNSTON, Mr. SYMMS, and Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Mr. President, it is my intention to yield 5 minutes to the Senator from Wisconsin unless the Senator from Louisiana wanted the time in opposition.

Mr. SYMMS. Will the Senator from Rhode Island yield to the proponents 5 minutes first because I have a hearing I must chair?

Mr. CHAFEE. Certainly, Mr. President.

The PRESIDING OFFICER. Does the Senator from Idaho have the time of Senator GOLDWATER?

Mr. SYMMS. I do, Mr. President.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, I yield 2 minutes to the Senator from Louisiana.

Mr. JOHNSTON. I thank the Senator from Idaho.

Mr. President, wetlands in Louisiana are not an idle concern. Louisiana is almost all wetlands and in times of hurricanes and floods, the wetlands are wet and people suffer a great deal. So we look at section 404 and wetlands as the protection of very heritage, the protection of our lives and fortunes and homes and crops and worldly possessions. So we in Louisiana want wetlands to be protected. We also want a balance so there are places for people to live.

To say that Robert Dawson does not enforce section 404, Mr. President, is a bum rap, in my judgment. I can give no better evidence of that than the recent events in Jefferson Parish, LA. Jefferson Parish is that parish surrounding New Orleans that stretches from Grand Isle on the south and La-fitte up to the New Orleans Interna-

tional Airport north of New Orleans. There has been an ongoing dispute there with the powers that be in Jefferson Parish about the location of a levee.

The Corps of Engineers, under previous administrations and more recently under Mr. Dawson, insisted that that levee be located in such a way as not to encompass several hundred acres—I think it actually is a couple of thousand acres—of wetlands. The governing body of Jefferson Parish wanted very much to extend that levee in order to have another couple of thousand acres of land to develop. It was a very real and strong fight. I personally arranged a number of meetings between the Corps of Engineers and the EPA officials with respect to the location of that levee.

Only in the last few weeks, Mr. President, has the dispute finally been resolved—resolved by agreeing to what the Corps of Engineers had said all along under Mr. Dawson. If it were true that Mr. Dawson always wanted to side with the developers, this would have been an excellent case, because from the president of Jefferson Parish down through all the councilmen, through the people of the parish, they all wanted to develop this area of Jefferson Parish. The corps, under Mr. Dawson, said no. So, Mr. President, I can tell you that it is simply a bum rap to say that Robert Dawson always comes down on the side of the developers.

What we have found is that he is a man of balance, a man of knowledge—

The PRESIDING OFFICER (Mr. DENTON). The Senator's time has expired.

Mr. SYMMS. I yield 1 additional minute.

Mr. JOHNSTON. We think he is a man of knowledge and balance, Mr. President. This, as I say, is not some idle concern of ours. We want to protect those wetlands and we want someone with the expertise to know where to locate levees, what land to protect, what land to develop, and how to design these very difficult flood control structures upon which our very lives and fortunes depend.

I think Robert Dawson has shown himself to be the kind of man who can do the job. I hope the Senate will support him.

Mr. SYMMS. Mr. President, I yield myself 4 minutes.

I compliment the distinguished Senator from Louisiana for what I consider to be a very excellent and accurate statement of my opinion of Mr. Bob Dawson. I think we have an opportunity today to confirm a person who is a very dedicated leader and a good public servant. Bob Dawson has an outstanding record both as Deputy and as Acting Assistant Secretary of

the Army and as a staff member of the Congress. He worked in the other body in the Public Works Committee. He is very knowledgeable on the issues he deals with in the corps. He has an excellent reputation and he is a man of competence and integrity.

In my view, he has met the challenges of his present and former positions with sound and creative approaches to accomplish the goals he has set for his programs.

Throughout his career at the Department of Civil Works, Bob Dawson has provided dedicated and responsible management of the Army's civil works programs. He has demonstrated fine leadership abilities and a strong commitment to the philosophy and policies of our President.

I stand with my other colleagues in enthusiastic endorsement of Bob Dawson because I believe his leadership and administrative ability and dedication will serve the Nation well. I think it is unfair to make these criticisms of him, that he in some way is not in favor of actually conserving our valuable natural resources.

Mr. Dawson's creativity and vision have helped to make the Army's complicated regulatory programs run much more effectively. His efforts are, contrary to the unfair criticism he has received from some, actually improving the way we conserve our valuable natural resources. At the same time, Mr. Dawson has effectively streamlined and simplified complex administrative burdens. Bob Dawson has introduced reasonableness and predictability to the Army's regulatory process. He has shown that responsible development is compatible with improvement of our Nation's environment.

One of President Reagan's first objectives upon assuming office was to provide some regulatory relief from unreasonable bureaucratic redtape and administrative hardships. One program that desperately needed reform was the Clean Water Act's section 404 program. Bob Dawson and others at the corps have implemented several new reforms that have improved the program. The 404 program is one of the most complex and cumbersome in government. Its administration is particularly difficult because it requires a delicate balancing of conservation goals and economic growth. Bob Dawson has done a tremendous job striking the right balance. I applaud him for being able to do this in a difficult and political environment. Contrary to the criticism of some, not only have delays and redtape been reduced but wetland protection has been enhanced. It has been enhanced; it has not been damaged. Permits are more difficult to obtain because of corps' policy of requiring adequate environmental mitigation. Mitigation is an important concept which encourages pri-

ivate sector involvement in addressing environmental problems.

Nonetheless, some of Mr. Dawson's innovative approaches to regulation, such as requiring and encouraging the sensible use of mitigation to improve wetland resources and permit responsible development to proceed, have drawn unfair criticism. Let's take an example. A carefully conditioned permit to build a shopping mall on a low-quality wetland in Attleboro, MA was granted this summer by the corps. The Attleboro developer will be allowed to fill 26 acres of low-quality wetlands for development. But conditions of this permit require that an additional 26 acres of poor wetlands at the site be enhanced through replanting, hydrological improvements, and other remedial measures. The State of Massachusetts found that this onsite mitigation effort alone would actually improve the aquatic ecosystem, not harm it as critics of the project have contended. But the corps went further. In addition to the developer's onsite mitigation efforts, the corps is requiring that the developers create a new, high quality wetland of approximately 40 acres at the nearby site of an abandoned gravel pit. The result: This project will create 65 acres of very high quality, diversified, functional wetlands where 49 acres of dysfunctional, rubbish-ridden lowlands now exist, while simultaneously creating over 3,000 jobs and millions of dollars of economic growth. I believe that this type of productive regulation, which sets a positive environmental precedent by requiring private sector enhancement of low-value wetland resources, is in the best interest of this country, and I wholeheartedly encourage it. We should be commending the Corps for these types of permitting actions, not criticizing them. The Attleboro case is a prime example of how economic benefits and environmental improvements can coexist.

In addition to implementation of sensible, productive policies to improve the 404 program under the Clean Water Act, Mr. Dawson has exhibited a high degree of effectiveness in the many other programs which are administered by the Department of Civil Works. Some of my colleagues may have lost sight of the fact that the 404 program is but one of the numerous responsibilities of the Assistant Secretary of the Army. Bob Dawson has the requisite experience and background to effectively oversee all aspects of the Department of Civil Works. For all of the reasons I've stated I strongly support the confirmation of Robert K. Dawson as Assistant Secretary of the Army for Civil Works. Mr. Dawson has been an effective and exemplary implementer of the President's policies, and should be commended, not criticized for his performance. Under his stewardship, I am

confident that the corps will continue to improve its programs and our environment and economy will both benefit.

Mr. President, during this debate, reference was made to a project in Attleboro, MA.

This project, a shopping center development has become the focal point of an environmental battle. Regrettably, as is often the case, a great deal of misunderstanding has grown up around this fight.

Mr. Dawson was criticized as then-acting Assistant Secretary for his role in the issuance of a Corps of Engineers permit for the development. Rather than being criticized, the Corps of Engineers should be praised for issuing such a strictly conditioned permit which requires both on- and off-site mitigation. The so-called wetland in question is degraded and dysfunctional. It is marginal at best and the conditionality of the permit requires onsite improvement as well as the creation of additional acres of valuable wetland to compensate for the loss of the degraded wetland. This is the kind of environmental project we should be endorsing.

Information was submitted for the record regarding the process followed in the corps permit decision. It gives the appearance that Mr. Dawson acted in an arbitrary manner. The record should reflect that the corps is currently investigating the regional decisionmaking process which culminated in a recommended permit denial by Lt. Col. Edward Hammond, New England District Engineer. Recently, a document was released to the public which indicates that the initial recommendation of the New England region's professional staff was to approve, not to deny, the Attleboro permit.

Mr. President, I ask unanimous consent that the following material concerning the corps' decision in the Attleboro case be reprinted in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

To: Interested parties.

Date: 9/22/85.

Re: Attleboro shopping center project by Newport Galleria Group (Pyramid Companies).

For your information, I am enclosing a document that heretofore has not been made available to the public. It affects the Attleboro Shopping Center Project. And it raises some serious questions about "behind-the-scenes" politics.

As brief background, the Newport Galleria Group is proposing construction of a shopping mall in Attleboro, and has obtained the necessary permits from the State and local governments. However, at the federal level, U.S. E.P.A. is fighting with the Corps of Engineers to keep the Corps from issuing a final construction permit. My understanding is that the company has agreed to a number of environmental conditions to

the project, including meeting all the objections that the State raised over the last 10 years to previous developers.

If not for environmental reasons, why then is E.P.A. giving this company a hard time? If you look into this matter a bit further, you very well may find that politics and not sound environmental policy is the reason.

Three disturbing questions for which you may wish to get answers are:

(1) Regarding the enclosed document, what took place in several private meetings between E.P.A. Regional Administrator Mike Deland and the Corps District Engineer Ed Hammond that may have led to their overturning the enclosed original decision document approving the Attleboro Shopping Mall? The document was prepared in December 1984 by project manager Janet O'Neill.

Many newspaper stories have implied that for political reasons, Corps Headquarters "overruled" our Regional Corps. It appears that the final determination of Corps HQ to approve the Attleboro project merely agreed with Regional Corps professional staff, not with Mr. Deland and Mr. Hammond.

(2) What took place in numerous meetings between Mr. Deland and his long-time friend Douglas Foy—who heads the Conservation Law Foundation which has filed a lawsuit against the Attleboro project?

(3) And, what also took place in meetings between E.P.A. Regional Counsel Pat Parenteau and his former employer—the National Wildlife Foundation which has also filed a lawsuit against the Attleboro project?

I hope you get to the bottom of this mess. I have heard some pretty awful things.

My last question: from an environmental standpoint, isn't it true that we will actually have more and improved wetlands with off-site mitigation measures that the company has agreed to undertake? What's the story here?

Thank you for your attention to this matter.

CONCERNED CORPS STAFF.

STATEMENT OF FINDINGS AND ENVIRONMENTAL ASSESSMENT

1. APPLICANT: NEWPORT GALLERIA GROUP

Application Number: NEDOD-R-02-84-652C.

2. ISSUE OF PERMIT

This permit is being issued under authority delegated to the Division Engineer from the Secretary of the Army and the Chief of Engineers by Title 33, Code of Federal Regulations, Part 325.8, pursuant to:

() Section 10 of the River and Harbor Act of 1899.

(X) Section 404 of the Clean Water Act.

() Section 103 of the Marine Protection, Research and Sanctuaries Act.

3. CHARACTER, LOCATION, AND PURPOSE OF WORK

To place 885,000 cubic yards of granular fill in 32.3 acres of a 49.6 acre wetland in South Attleboro, Massachusetts. The wetland, known as Sweeden's Swamp, is largely red maple swamp and is adjacent to a headwater tributary of the Seven-Mile River. The fill is for construction of the Newport Avenue Galleria, a proposed shopping mall. The applicants would also excavate 9.0 acres of upland to create wetland and alter 13.3 acres of the existing swamp to enhance its value for wildlife fisheries and water quality maintenance. Another 4.0 acres of the existing wetland would remain undisturbed. The

proposal includes several other mitigation features, such as a gravel recharge pad and underlying clay liner on site. The pad is intended to provide stormwater detention and renovation, and to modulate downstream flow. The clay liner is intended to protect underlying groundwater. The project details are shown in the attached plans. The applicants would also create about 35 acres of wetland consisting of marsh, open water and shrub swamp, and 17 acres of upland at their gravel borrow area as further mitigation.

4. ENVIRONMENTAL SETTING

The project site is an 80± acre parcel of undeveloped property in South Attleboro, Massachusetts, about ¼ mile from the Rhode Island border. It is bounded on the south by I-95, on the east by Newport Avenue (Rte 1A), and on the north and west by residential development and Rte 1. Rtes and 1A are heavily developed immediately south of the Rhode Island border (Pawtucket). There are also some businesses along these roads in South Attleboro.

5. CHARACTER OF RESOURCES IMPACTED

The property consists of about 49.5 acres of wetland and about 32 acres of upland. Wetland cover types include primarily wood swamp and small elements of shrub swamp and marsh, all adjacent to headwater tributaries of the Seven Mile River, which, in turn, is a tributary to the Ten Mile River.

Upland cover types include forest, disturbed abandoned fields and developed areas. The entire site has been subject to human disturbance, including random dumping of trash, gravel borrow operations and dirt biking. However, the site represents a large parcel of open space in this suburban area. The resources supported by the site and the project's anticipated impacts on those resources are described in part 8 of this document.

6. RELATIONSHIP TO EXISTING USES

The area contains some strip commercial development along Rte 1. Otherwise the site is largely surrounded by residential development. However, it is appropriately zoned for commercial development.

7. ALTERNATIVES

The applicants used a number of screening criteria to choose a site within the primary trade area. These criteria included availability and size (through review of local assessor's records and real estate brokers); highway access (at or near a major interchange to avoid routing traffic over secondary roads); visibility (should be on a well-traveled highway arterial); location with respect to population concentration within the trade area; compatibility with adjacent land uses; public acceptance; zoning and land use restrictions; infrastructure; and, environmental problems and solutions. No sites could meet all of these criteria. However, several sites met the most important criteria, namely location, access and visibility. The following is a discussion of why these sites were rejected:

(1) A 115± acre parcel at the Rte 140/I-95 interchange in Foxboro, Massachusetts.—The applicants rejected this site primarily because it is located too far north to serve the major concentration of the trade area's population, which lies in Attleboro, South Attleboro, Taunton, Pawtucket, East Providence, Taunton, Seekonk and Central Falls. With the exception of Woonsocket, towns in the northern part of the trade area are less thickly settled. As a result, the department stores that would be potential tenants were

not interested in this location. The Edward J. DeBartolo Company, in partnership with Homart Development Corporation, had tried to obtain lease options for a mall at this location from 1977-1979 and failed. In addition, DeBartolo and Homart met with representatives of several department store parent companies in 1982 to discuss design revisions and difficulties at the South Attleboro site. At that time, representatives of two department stores indicated that, regardless of whether a mall would ever be built at South Attleboro, they would not lease or buy space at the Foxboro site.

Other problems associated with the site included inadequate water supply and irregular site configuration.

(4) Sites at the cloverleaf of I-295 and Rte. 1 in North Attleboro, Massachusetts.—The applicants rejected these sites because they doubted the potential long term viability of a mall in this location. A number of developers including Rouse, Inc., DeBartolo Corp., and Frank Developers had tried and failed to attract potential department store tenants. Other developers, including Diversified Developers and U.S. Gypsum/Arlens Inc. had tried to build smaller shopping centers (supermarket/discounters) at the locations but could not obtain the necessary permits for roadway modifications from the Mass. Department of Public Works. The Edward J. DeBartolo Corporation has submitted a letter confirming their failure to attract potential department store tenants to these locations. Both the DeBartolo Corporation and the applicant believe the reluctance of the department stores to locate at this interchange was due to its location too far north to properly serve the trade area and the fact that I-295 is much less traveled than I-95, the major Boston-to-Providence arterial. Therefore, the visibility needed for long-term viability is not adequate.

Cinema Centers Corporation has also indicated that they would not locate anywhere but the South Attleboro site. At least 40% of their customers and drawn from highway markees. Therefore, they need to be located on Rte. 95, which carries the bulk of traffic through the area. Further coordination with both the applicants and a potential developer of one of the North Attleboro sites has led us to conclude that in our opinion, the South Attleboro site is the only practicable alternative for a shopping mall in this area. We do not believe it is our role to determine whether department stores are correct in assuming that the visibility and access is not workable at the North Attleboro site. The fact is evidence exists that many such stores are not willing to locate at this intersection, and their willingness to buy or lease the anchor stores is a critical factor for a successful mall. Other problems at the North Attleboro site include the difficulty these applicants anticipate in obtaining MA-DPW permits for necessary roadway modifications; the size and shape of the parcels make it difficult if not impossible to provide a mall with adequate parking; and equivalent access to all three anchor stores; and smooth, safe, efficient traffic flow within the mall.

(3) Central Business District (CBD's) within the trade area, especially downtown Attleboro and downtown Pawtucket.—Only downtown Pawtucket is served by major highway access. All CBD's lack adequate parking due to existing space constraints. Purchasing enough lots to accommodate a large enough facility would be extremely difficult and extremely costly, since it would entail purchasing lots already developed

and razing or extensively modifying existing buildings.

Downtown Attleboro and Pawtucket were considered the most promising. However, the applicants were concerned about the history of this type of development in Pawtucket. A downtown "open-air" pedestrian mall in Pawtucket has not shown great success probably due to its location on the fringe of the trade area; because parking is inadequate; and, because present street layout is not conducive to maintaining smooth traffic flows.

Downtown Attleboro is favorably located but is too small to accommodate the development. A mall could conceivably be developed on the fringes of the downtown, but traffic problems would be caused by inadequate highway access. Once again, this location would not provide the visibility desired by most potential department store tenants because it would not be located on a major arterial.

(4) The applicant considered enlarging the Triboro and Washington Plaza but rejected these sites because they did not meet any of the basic screening criteria. These alternatives would also involve buying out leases from current tenants and demolishing existing buildings. However, the primary problems are space, highway access and visibility.

(5) Reconfiguration of the proposed project. The proposed development is already a reduced scale of the earlier Mugar and DeBartolo proposals for malls on the same site. To reduce the project area further would require construction of parking garages; reduction in leasable floor space; constructing a 3- or more-tiered structure; or, some combination of these measures. DeBartolo had reduced their design by incorporating parking garages prior to abandoning their project in 1982. The garages were costly and would have required an Urban Development Agency Grant to make the project economically feasible. Also, a copy of an internal memo in the applicant's file showed that the department store tenants did not like the design and were unlikely to lease because the garages obstructed the visibility of portions of the mall, including the anchor stores, from the highway. In addition, construction of garages or a multi-level structure would require excavation of all peat and backfilling or use of piles beneath the footprint of the mall, raising construction costs dramatically. At present, peat will be excavated from beneath the proposed building and backfilled with gravel while peat below the proposed parking areas and "pad" will simply be surcharged at a much lower cost. Constructing garages and/or a multi-level structure would also add to the mall's imposition on surrounding neighborhoods.

Reducing leasable floor space (i.e. only one or two anchor stores and fewer small shops) would not greatly reduce wetland filling and due to economies of scale, would probably preclude most of the mitigation presently proposed, including off-site replacement of wetland and on-site measures such as the recharge pad, resulting in a greater net loss of wetland.

(6) The "No-Build" alternative—would preserve the environmental values provided by the existing wetland. These values are described in detail in the Assessment of Impacts at part (8) of this document. Briefly, these include moderate to good wildlife habitat for a variety of species; open space for a relatively urbanized area; limited recreation; limited water quality maintenance; and limited flood storage.

The no-build alternative would forego the socioeconomic benefits directly and indirectly generated by the mall. The applicants anticipate creation of 2250 full and part-time long-term job opportunities and 1500 construction jobs; about \$500,000 in net annual tax revenues to the city; a reduction in current sales leakage to outside market areas; a net increase of \$25,000,000 in cash flow for the regional economy; and numerous spin-off benefits. Community Development for Attleboro, Inc., a quasi-public agency which acts as the city's economic development department, predicts between 1000 and 1500 construction jobs, 1000-1400 full-time long-term jobs and 500-1000 spin-off jobs. Also, the city believes presence of the mall should attract more shoppers to the Rte. 1, Rte. 1A area, increasing business for existing commercial development in this area.

8. ASSESSMENT OF IMPACTS

A. ¹ [C.] ² Impacts on physical/chemical characteristics of the aquatic ecosystem:

The project would:

(X) change the physical and chemical characteristics of the substrate.

(X) change the substrate elevation or contours.

() cause erosion, slumping or lateral displacement of the surrounding substrate.

(X) change water fluctuations.

Comment: All but 4 acres of the site would be disturbed through excavation, surcharging and placement of fill as outlined in part 3 of this document. A total of 26.3 acres of wetland would remain, of which 13.3 acres would be at lower elevation to provide for more flood storage and to create marsh, shrub swamp and open water cover type. Nine of these 26.3 acres would be created from upland. Marsh areas would be inundated more frequently and at a greater depth and for a longer duration than the existing wood swamp. Inundation may also increase in a small area of the 4.0 acres of remaining wood swamp.

These changes would affect:

(X) currents, circulation or drainage patterns.

(X) suspended particulates and turbidity.

Comment: At present, runoff from 70% of the 622± acre watershed flows through the wetland in several stream channels to the Seven Mile River, without much contact with the wetland. Runoff from 30% of the watershed contacts the wetland as diffuse flow. The applicants would redirect channelized runoff over spreader berms to increase contact of runoff water with the remaining 26.3 acres of wetland, either as diffuse overland flow or as interflow through the upper layer of peat (root zone).

Construction activities would generate some erosion and sedimentation. However, on site the applicants would use erosion and sedimentation controls and follow a schedule that would minimize generation of suspended particulates and turbidity, and prevent adverse effects to downstream areas.

These changes, would in turn, affect:

(X) water quality (clarity, odor, color, taste, D.O. levels, nutrient levels, toxins, pathogens, viruses, etc.).

() water temperatures.

() salinity gradients.

() thermal stratification.

Comment: The increased contact of runoff water with the wetland should provide for greater contaminant removal through settling, filtration and adsorption processes. Also, replacement of wood swamp with marsh systems would increase stem densities and plant surface area per wetland area enhancing filtration; baffling, and therefore, coagulation and sedimentation of colloidal material and would increase opportunity for adsorption of contaminants to plant materials. The increased contact of runoff contaminants with organic soils would allow greater opportunity for adsorption to soils, as well. Export of dissolved organic materials may increase.

B. [E.] Impacts on special aquatic sites:

The changes presented in subpart A would occur in:

() sanctuaries and/or refuges.

(X) wetlands.

() mudflats.

() vegetated shallows.

() coral reefs.

() riffle and pool areas.

Comment: The fill would initially eliminate 32.3 acres of wetland, largely red maple swamp. Other alterations would change another 13.3 acres of wood swamp to marsh and shrub swamp cover types for enhanced flood storage, water quality renovation and wildlife habitat value. The applicants would excavate 9.0 acres of upland on this site to create wetland. They would create an additional 35 acres of wetland in an abandoned gravel pit at another one of their properties in the Ten Mile River watershed for a net of 11.7 acres of wetland. Wetland functions would improve. Wetlands created would be marsh, meadow and shrub swamp habitat types. These should remain as wetland over a longer time span and would also provide wetland types that are presently more limited in extent in New England than wood swamp.

The special aquatic site provides benefits including:

(X) flood control

(X) water purification

(X) food chain production and nutrient export

() storm, wave, and erosion buffers

() aquifer recharge

() habitat for fish and other aquatic organisms

(X) wildlife habitat

Comment: The wetland is a headwater of the Seven Mile River. It has a small watershed (622± acres) and as such provides only limited flood storage. The applicants would provide compensatory storage to avoid cumulative impacts. Portions of the wetland, namely those subject to overbank flooding by the streams; areas subject to diffuse flow of runoff (overland and groundwater interflow); and sections of the stream channels themselves, act to renovate water quality through adsorption and sedimentation processes. Fill would eliminate portions of these areas. The project includes features to mitigate this loss. The potential effectiveness of the proposed mitigation has been debated.

Even if woody vegetation does provide a longer term sink, it does not provide the filtration and adsorptive capacity that an emergent system, with high stem density and plant surface area, would provide.

The consultants for the applicants collected input/output runoff quality data during 3 rainstorms in 1984. The quality of water exiting at the side was not substantially different from quality of runoff entering the

¹ The assessment of impacts is designed to generate information needed to do a 404(b) Compliance Review (40 CFR Part 230), as well as to generate an environmental assessment which considers all the public interest factors as required by our Regulatory Program Guidelines (33 CFR 230.4)

² Bracketed letter designations correspond to subparts of the 404b Guidelines (40 CFR Part 230, 24 December 1980).

site, indicating that the existing wetland was not renovating water quality to any great extent. In fact, the quality of runoff entering the wetland was fairly good. Contact of runoff with the wetland will be doubled or tripled by the mitigation, so that opportunity for physicochemical processes such as filtration, coagulation, adsorption, etc. would likely be doubled or tripled. Increasing open water would increase biological processes responsible for removing soluble phases of nutrients and contaminants. The change from woody to emergent vegetation may on the other hand, increase the rate of nutrient turnover through release of detritus and leaching of dissolved nutrients. However, much detritus would be incorporated into the soils, since the surface water velocities would generally be too low to flush detritus to downstream areas. Also, any release of detritus that did occur would be during periods when dilution ratios were high. Runoff from the mall itself would generally be renovated by urban runoff controls such as sedimentation sumps, oil and grease lids, etc. and by the mall "pad" which would act as a gravel filter for most storms. Therefore, it appears that there would be no loss and most likely an improvement in quality of water exiting the site.

The project would reduce food chain production on-site. As mentioned above, it may reduce overall nutrient export, even of soluble phases. The only exception may be dissolved organic compounds. However, the Seven Mile River is a warmwater stream with a substantial amount of riparian wetland, residential development and some agricultural development. As such it is unlikely to be nutrient-limited and downstream aquatic food chains should not be impacted.

To the extent that the wetland provides valley storage, it helps reduce downstream flood damage and erosion by detaining and slowly releasing stormwater. The mall pad and the proposed wetland would compensate for loss of this function.

The wetland is a groundwater discharge rather than a recharge area. It is lower than the surrounding topography and overlies a regional aquifer. The upland ridge separating the west and east swamps most likely provides a recharge area, since it is largely sand and gravel.

The thickness and low hydraulic conductivity of the peat most likely limits groundwater discharge, except around the wetland periphery where peat is shallower. This suppression of groundwater discharge may act to modulate downstream flows and storage in the upper 1-2 feet of peat may also contribute to stream baseflow. The fill would not appreciably affect the first function since it would maintain a relatively impermeable barrier. Excavation in areas where peat is presently shallow, such as the periphery of areas F and E, may decrease this function somewhat by increasing the rate of groundwater discharge. However, the recharge pad, with a conductivity of 0.38 inches/5 days should also act to modulate downstream flows and should help offset loss of wetland for this function.

The wetland provides limited fisheries habitat. The project would increase the amount of this habitat by tripling open water and deep marsh as mitigation. The value of the wetland for wildlife and anticipated adverse impacts are outlined below.

C. [D.] Impacts on biological characteristics of the aquatic ecosystem

The changes in subparts A and B would adversely impact:

() endangered or threatened species, or critical habitat for such.

() fish, mollusks or other aquatic organisms through:

() removal.
() temporary displacement.
() permanent displacement or lowered numbers through changes in overall suitability of habitat in terms of substrate, temperatures, water quality, etc.

() interfering with spawning migrations.
Comment: The proposal would not affect endangered or threatened species or habitat for such.

The project would generally increase fisheries habitat on site from about 0.6 acres to 1.9 acres. The existing habitat is not of very good quality and is restricted to the last few hundred feet of the stream before it exits the site. Most of the streams have a colloidal substrate unsuitable for fish and aquatic invertebrates. Off-site mitigation would also provide additional fisheries habitat.

() Or other wildlife in terms of:
(X) breeding and nesting habitat.
(X) escape cover.
() travel corridors.
(X) food supplies.
() competition from nuisance species.
() reduced plant species diversity and interspersions of habitat types.

Comment: The project would increase diversity and interspersions of wetland cover types, and increase the diversity of species using the wetland. However, the overall habitat value of the site would be reduced through loss of wetland and upland acreage. The applicants, therefore, propose to create additional habitat (wetland and upland) on another one of their properties within the Ten Mile River watershed. The property is presently highly disturbed and provides a excellent opportunity for enhancement. The off-site mitigation would consist of thirty-five acres of open water, marsh, meadow, shrub swamp and seventeen acres of upland old field, with interspersions and edge of cover types maximized to enhance its value for wildlife.

The created wetlands would provide habitat for different species than those using the existing wetland. However, the types of species using Sweden's Swamp tend to be tolerant of human disturbance and associated with the forest cover type rather than wetland. Many of these species would use a mesic upland forest with similar structure as well as a wetland forest system, and are not presently limited greatly by available habitat. The 1982 National Wetlands Inventory report for the northeast indicated that acreage of forested wetlands did not decrease greatly but that wet meadow, marsh and shrub swamp types have. Animals associated with these latter types are much more limited by available habitat. The wetlands would be constructed in a manner that would provide habitat for species of special concern, such as woodcock, wood duck and black duck.

D. [F.] Impacts on human uses.

The impacts in subparts A, B, and C would adversely impact human uses of the reasons through degradation of:

(X) existing or potential water supplies.
() recreational or commercial fisheries.
() other water-related recreation.
(X) aesthetics of the aquatic ecosystem.
() parks, national and historic monuments, national seashores, wilderness areas, research sites, and similar preserves.
(X) other value.

Comment: Sweden's Swamp is underlain by a large regional aquifer with capability for moderate water supply. However, Commonwealth restrictions (400 foot buffer

zone) would only allow wells to be placed on about 10% of the site. Pumping would reverse groundwater flow direction within the cone of depression of each well, causing downward movement of naturally occurring Fe^{++} , Mn^{++} and Ni^{++} etc., which are expensive to remove through water treatment processes.

The project should not affect groundwater quality. Groundwater flow is presently upward through the peat. The applicants propose to take an extra precaution by isolating their development from the aquifer with a clay liner. Should the liner fail, there would still be 30-40' of surcharged peat separating the development from the aquifer. Groundwater flow direction would have to be reversed by actual placement and pumping of wells before contaminants could migrate to groundwater. Then most contaminants would most likely be removed by the peat layer before reaching the aquifer even if the liner were not in place.

The mall would eliminate the small recharge area provided by the upland gravel ridge. However, the area is very small in relation to the aquifer, so that the project should have a negligible impact on aquifer capacity.

The mall would change the aesthetics of the ecosystem. We have received both favorable and negative comments on this change, indicating the subjectivity of this judgement. The periphery of the site as been degraded by unauthorized dumping of trash debris.

The existing site does have value as open space for the surrounding community. This value would be replaced by off-site mitigation. However, the replacement would be within a different community.

Recreation on the site is presently limited to dirt-biking by neighborhood youths and perhaps some passive recreation such as wildlife observation. The latter value would be limited by trail-biking activities and degradation of aesthetic values from dumping.

E. Other Concerns:

The proposal will impact:

(X) traffic.
(X) energy consumption or generation.
() navigation.
(X) safety.
(X) air quality.
(X) historic resources.
(X) noise.
() land use classification.
(X) socioeconomics.

Comment: The mall would increase traffic along Routes 1 and 1A with the highest increase concentrated between I-95 and the mall entrances. This increase would be most significant (90% on the average day) between I-95 and the mall entrances. Trips generated on peak use days (Saturdays, holidays) would be 17%-33% higher but would also occur when background commuter traffic was low. The applicants would fund all the necessary roadway modifications. The applicants propose to widen Rte 1A (which would carry the bulk of this increase) to a 4-lane roadway. Both roads would have new signals at the intersections of Rtes 1 and 1A and the mall entrances. According to the MEPA staff traffic analysis, the mall is situated so that during peak traffic, most turns would be to the right having less of an impact on traffic flow.

It is difficult to predict whether the mall would increase or decrease energy consumption. Construction and operation would require fuel expenditures. However, provision of "one-stop" shopping facilities within the

trade area would decrease the overall distance travelled to obtain market goods.

The increased traffic along Rtes 1 and 1A in the vicinity of the mall may increase minor vehicle accidents. Mitigating measures, such as widening the roadway and traffic lights, should prevent this. At our public hearing on September 17, the Attleboro Civil Defense Director stated he thought any measure that would slow the traffic on these roads would actually improve safety.

Institution of federal auto emission controls in the past few years has generally reduced air pollution caused by vehicular traffic. No violation of air quality standards is anticipated. However, increased traffic will most likely cause some degradation of air quality, at least between I-95 and the mall entrances. The closest residences are over 100 feet away and should not be noticeably impacted.

"Knoll C" contains archaeological resources and is eligible for listing on the National Register of Historic Places. The National Advisory Council has concurred that the project would not have an adverse effect, provided the permit is conditioned to have the proponents remove a representative sample of the resources. The applicants are presently working with the State Archaeologist to develop such a plan.

Construction activities and operation of the mall itself would generate noise. Removal of trees within the project site would eliminate their dampening effect on traffic noises from I-95 for residences abutting the north border of the site. However, the mall buildings themselves will dampen I-95 noise. Also, use of modern construction equipment, landscaping, and maintenance of some of the existing vegetation would also help to mitigate noise impacts. Field monitoring conducted by previous proponents for the state environmental impact report indicates that existing noise levels in the local neighborhoods are high, and that mall noise should not be noticeable above these background levels.

The new mall should not have a significant impact on existing businesses within or adjacent to the trade area. The demographic and economic data supporting this conclusion is summarized in our General Evaluation of the project (Part II).

F. [G] Evaluation and Testing:

(X) The applicant proposes to discharge dredged material or use fill from other than a clean upland source. The following is an evaluation of the need for testing, testing performed, and evaluation of results:

The applicants would use fill at the mall site from a clean upland source. However, they plan to discharge peat excavated from the mall site at their borrow area to create substrate suitable for wetland vegetation. The only sources of contaminants to this peat are urban runoff and aerial fallout, which would contribute very low concentrations of typical urban runoff constituents (lead, mercury, cadmium). These contaminants, if any, would be contained, in the top foot or two of peat excavated, reflecting the recent history of such inputs.

The discharge site (the applicants' gravel pit) presently receives aerial fallout and urban runoff from I-95 and adjacent residential development which would contain the same type of contaminants. Providing wetland soils at this location should increase trapping of these contaminants before they enter surface water, rather than contribute additional contaminants. Therefore, testing is not required.

G. [H] Actions to Minimize Adverse Effects:

The following actions would be taken to minimize adverse environmental effects:

The applicants would excavate 9.0 acres of disturbed upland on site to create wetland. They would alter 13.3 acres of the remaining wetland to enhance its value for wildlife fisheries, water quality maintenance and to compensate for lost flood storage.

They would use erosion and sedimentation controls, and follow a construction schedule phased to prevent downstream turbidity and siltation.

They would reclaim their gravel borrow area to create a mixture of upland and wetland habitat for optimal wildlife habitat. Mitigation is shown on plans attached to the permit.

9. SECTION 404 (B) COMPLIANCE REVIEW

A.³ Restrictions on discharge:

(a) Are there available practicable alternatives having less advance impact on the aquatic ecosystem and without other significant advance environmental consequences:

(1)(i) that do not involve discharge into "waters of the U.S." or ocean waters? (ii) at other locations within these waters?

(2) Is there an alternative in (1) above, not presently owned by the applicant, that can be reasonably obtained?

(3) Is the project water dependent? If not, has the applicant clearly demonstrated that there are no alternative sites available?

Is the site a special aquatic site?

If so, has the applicant demonstrated other practicable alternatives are more damaging to the aquatic ecosystem?

(b) Will the discharge:

(1) violate state water quality standards?

(2) violate toxic effluent standards?

(3) jeopardize endangered species?

(4) violate standards set by the Dept. of Commerce to protect marine sanctuaries, etc.?

(c) Will the discharge contribute to significant degradation of "waters of the U.S."?

Effects contributing to significant degradation include adverse impacts to:

(1) human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife, and special aquatic sites. Impacts not significant.

(2) life stages of aquatic life and other wildlife. Impacts not significant.

(3) diversity, productivity and stability of the aquatic ecosystem, such as loss of fish or wildlife habitat, or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy. Impacts not significant.

(4) recreational aesthetic, and economic values. Impacts not significant, except economic values will be significantly improved.

B. Factual Determinations:

(a) Physical substrate determinations: See Part 8A of this document.

(b) Water circulation, fluctuation, and salinity determinations: See Part 8A of this document.

(c) Suspended particulates/turbidity determinations:

The applicants propose to follow a construction schedule and use sedimentation and erosion controls to minimize suspended particulates and turbidity. Alterations to the wetland that would remain after construction should generally improve the quality of water exiting the site.

(d) To what degree will the discharge introduce, relocate, or increase contaminants?

The discharge should not introduce any contaminants either directly or indirectly. Runoff from the new mall would be similar in character to that presently entering the wetland. Runoff would be directed through drains with sedimentation basins and grease and oil lids; filter through the gravel recharge pad; and then flow through the enhanced wetland system before entering any surface water resources.

Excavated peat to be transferred to the gravel borrow area for wetland construction which may have urban runoff contaminants bound to soil particles. However, the gravel borrow area is located adjacent to I-95 and surrounded on the other three sides by residential development. Therefore, it receives a substantial input of urban runoff already. Spreading peat and creating wetland should improve trapping of such contaminants.

(c) Aquatic ecosystem and organism determinations: See Part 8C.

(f) Proposed disposal site determinations: N/A.

(g) What are the potential cumulative effects on the aquatic ecosystem?

Sweeden's Swamp is a remnant of a larger wetland unit that existed in the area prior to construction of I-95 and surrounding development. The project would contribute to this impact. However, mitigation would offset net losses of the functions provided by the wetland eliminated by the project, so that the project would not cause a cumulative impact. Regional wetland acreage would actually be increased through additional off-site wetland.

(h) What are the secondary effects on the aquatic ecosystem?

The mall would generate additional traffic, noise and some degradation of air quality in the vicinity. These effects are discussed in Part 8E.

The mall would increase stormwater runoff to the aquatic system. However, the applicants have included stormwater detention and renovation measures.

C. Findings of compliance or non-compliance.

The proposed discharge:

(2) Complies with the Guidelines with the inclusion of appropriate conditions to minimize adverse effects to the affected ecosystem.

10. Findings:

a. The Massachusetts Department of Environmental Quality Engineering denied an earlier proposal by the Edward J. DeBartolo Corp. to build a mall on the site in 1982. Working with the DEQE Division of Wetlands, the current applicants have modified the proposal to meet the statutory interest of the Mass. Wetlands Protection Act. They are currently adjudicating the earlier denial. The hearing officer has not yet made a decision.

b. State water quality certification

c. A public notice adequately describing the proposed work was issued on August 16, 1984 and sent to all known interested parties. All comments received are noted below and have been evaluated and are included in our administrative record of this action.

(1) Federal Agencies.

U.S. Environmental Protection Agency—in a letter dated October 5, 1984, objected to the proposal because it did not comply with the 404(b)(1) Guidelines, because of the extent of wetlands to be filled and, in their opinion, the existence of practicable alternatives. They expressed concern about the significant individual and cumulative loss of wildlife habitat; potential impacts on water quality; and, that the proposed mitigation

³ The Review is based on information required by 40 CFR 230 Subpart B.

could not fully compensate for the loss of 30 acres of wetland. Other comments included: the applicants equated need for the project with its economic viability; North Attleboro is a practicable less damaging alternative because it includes less wetland (not 30 acres as claimed by the applicant), is only 3 miles north of Sweden's Swamp, is equidistant between regional population centers of North and South Attleboro, and will probably be rezoned; local opposition exists for the South as well as the North Attleboro site. The fact that another developer proposes to construct a regional mall at the North Attleboro site is indication that it is a practicable alternative. The North Attleboro site would also be more attractive to potential tenants if this permit were denied.

EPA asserts that Sweden's Swamp provides recharge for the underlying aquifer and the Seven Mile River; detention for stormflows; and, natural water filtration. They claim testimony presented by the opposition indicates that overbank flooding has been severely underestimated; that quantitative figures were never submitted by the applicant to indicate that the recharge pad and improved wetlands would work; that the accuracy of the hydrologic models was questionable; that the applicants should submit calculations of stormwater runoff rates, capacity of the drainage and exfiltration systems, resultant surface and groundwater levels from design storm events, types and quantities of pollutants in stormwater runoff, treatment/ restorative capacities of proposed measures, and long term maintenance plans.

EPA also believed the Corps should do an environmental impact statement because the size of the wetland loss is significantly large for New England; would contribute to cumulatively significant impacts; there are practicable, less damaging alternatives available and issuing a permit would establish a precedent; the project is controversial and similar to North Haven Mall, for which we did prepare an EIS; the Corps had agreed to do an EIS for the earlier proposal by the DeBartolo Corporation.

EPA indicated that if the Corps decided to issue the permit they would consider elevating our decision to Washington under the Memorandum of Agreement and consider asserting their veto authority under 404(c).

U.S. Fish and Wildlife Service—noted a discrepancy in the amount of wetland that would remain after construction. They estimated only 20 acres would remain, not 26. The project would cause a net loss of 166 habitat units of value, even with the on site mitigation, based on the habitat evaluation conducted by the U.S. F&WS, EPA, the Corps and the applicants' consultants. They recommended that the applicants be required to provide equal habitat value through additional mitigation.

Their comments on compliance with the 404(b)(1) Guidelines were similar to EPA's, especially concerning the North Attleboro I alternative. They did, however, concur with the applicants assessment of North Attleboro II (southeast quadrant) because of the amount of wetland on the lot. They asserted that North Attleboro I and Foxboro were less damaging practicable alternatives. It appears that the applicant selected the site based primarily on economics. The (on-site) mitigation does not fully compensate for the impacts and should not be discussed prior to determining compliance with the guidelines. In summary the F&WS is concerned over significant habitat losses to migratory wildlife and may decide to elevate

our decision to Washington under our Memorandum of Agreement if we decide to issue the permit.

National Marine Fisheries Service—had no resources of concern.

Keeper of the National Register of Historic Places—concurred that "Knoll C" was eligible for listing.

Advisory Council on Historic Preservation—concurred that there would be no adverse effect to historic resources provided that the Corps issues a permit conditioned that an archaeological data recovery program be completed prior to construction in the area of Knoll C.

Congressman Barney Frank favors the proposal because it will be an important input to the region's economy. After reviewing testimony presented to the DEQE, he believes the developer will protect the important environmental issues while offering significant economic benefits to the City. When developers act with environmental sensitivity, government agencies should respond in a manner that allows important economic development to go forward.

(2) State Agencies:

The Rhode Island Statewide Planning Program—questioned the need to destroy 30 acres of wetland when environmentally preferable locations are available within the trade area. They questioned whether the recharge pad concept had been tested; who would maintain the pad; and, what measures would be taken to attenuate runoff problems if the pad failed. EPA's "Results of the Nationwide Urban Runoff Program" (Dec., 1983) indicated that street sweeping is not effective for reducing contaminants in runoff. Thus, contaminant loading on the Seven Mile River would be greater than predicted. Deep and shallow marshes would receive more nutrients, increasing their rate of eutrophication. They questioned the life expectancy and long-term maintenance of the new and altered wetlands and urban runoff controls. The applicants did not consider the wetlands' value for passive recreation; environmental education; and open space, or the sites' value for noise attenuation, air quality enhancement and aesthetic benefits. The applicants did not consider socioeconomic impacts on other CBD's, such as Pawtucket, Central Falls, Woonsocket, Attleboro and Taunton. The 150+ smaller mall shops would compete with smaller business establishments in Central Falls and Pawtucket, causing losses of jobs and taxes, and small business failures. They are concerned that the flood storage eliminated would not be fully compensated by excavation of upland to prevent flooding. The Corps should investigate the efficiency and reliability of the mall pad design.

The Rhode Island Department of Environmental Conservation—is concerned because the project is within a mile of the Rhode Island border. The loss of wetland is not justifiable considering the benefits. The North Attleboro I site is environmentally preferable. Nonpoint pollution could impact Narragansett Bay. Ongoing research indicates that non-point source pollution from the Warwick and Midland Malls and I-95 is having significant adverse effect on the water quality of Narragansett Bay.

Massachusetts State Historic Preservation Office—stated that "Knoll C" on the site contains artifacts and still has integrity. The State Archaeologist has worked with the applicant to develop a mitigation plan (removal of a representative sample). She has recommended a finding of "no adverse effect" provided the permit is conditioned to

require the applicant to complete the mitigation prior to construction in the area of "Knoll C."

Massachusetts State Representative Steven Karol—favors the proposal, because it would create about 2000 jobs and over \$500,000 in annual tax revenues. The applicants have designed the project to eliminate environmental impacts. The overwhelming majority of his constituents favor the proposal.

(3) Town agencies and officials:

The Mayor, City Council and City Planner—unanimously support the proposal. The applicants have addressed the environmental concerns and the project would provide jobs, add to the tax base and provide community residents with more convenient shopping. Their constituency have expressed overwhelming support and the project is consistent with the policies and goals of the City's comprehensive plan. Also, the project would correct drainage and traffic problems.

Community Development for Attleboro, Inc.—is a quasi-public organization that acts as the City's economic development department. They favor the project. They estimate that it would create 1000-1500 construction jobs for about 1 year, about 1000-1400 long-term direct jobs; 500-1000 spin-off jobs; and \$1,000,000 in annual taxes. It would attract shoppers to the Rte 1/Rte 1A area, increasing business for existing establishments. It would probably draw some business from downtown Attleboro (\$350,000-\$550,000). However, recent additions to the downtown, including 300 new parking spaces; 180 elderly units; a new municipal center; 12,000 square feet of new retail space; and, renovation of storefronts, etc. should offset these losses. Most downtown businesses are service-oriented. They are largely supported by office and manufacturing workers in the downtown area. The disposable income from elderly units alone would offset sales lost to the mall.

(4) Other Comments:

Massachusetts Audubon Society; the Massachusetts Association of Conservation Commissions; Allen & Demurjian, Inc.; Citizens for Responsible Environmental Management; Schofield Bros., Inc.; IEP; and various citizens—are opposed to the project. Such extensive filling and alteration of wetlands would undermine the spirit and the letter of the S. 404 program and set a precedent for similar proposals. We should enforce the law, which is designed to protect wetlands. The government regulators do not administer the program equitably between common people and people with money and power. We should conserve wetlands for future generations.

At a recent workshop at the Corps' offices, the applicants consultants were still flexible on design details. This indicates that the project had not been thought through. The Corps should not consider the project and should reopen the comment period when design is complete.

The need for the project is not documented by a market analysis or job projections. Rather, it is based on subjective judgment. The goods to be offered at the mall are available elsewhere. The need is strictly that of the proponents and potential tenants for financial benefit. The city will not realize the tax benefits anticipated because of the drain on municipal services. Malls are only accessible by auto and are, therefore, not accessible to the poor or elderly without good public transportation system. Residents do not need the mall when they have

Warwick, Lincoln, Midland, downtown Attleboro, Pawtucket and Rtes. 1 and 1A for shopping. The project will only rearrange management and workers.

The project site was chosen on the basis of economics, not need.

Many of the comments on alternatives were similar to those of EPA and U.S. F&WS, including concerns for the accuracy of the applicants' submittal. The North Attleboro I site is now sewered and the lack of sewer was the reason for the previous denial of the zoning change request. The Corps should not issue the permit based on the consideration that this is the only site where the applicants can circumvent the new state wetland regulations. Whether to consider the project under the old or new state regulations is not yet decided by the state hearing officer. Purchasing additional lots for any of these sites could correct size and configuration problems. We should consider that Triboro Plaza; Seekonk; and the area near the I-95/I-495 Interchanges. Access and location problems at these sites are not substantiated.

Comments on flooding included general concerns for flooding downstream and (due to interruption of drainage) in adjacent neighborhoods. The compensatory flood storage scheme may not work. Flood storage in the existing wetland may improve over time due to natural succession. Man-made mitigation structures will require maintenance, whereas the existing wetland does not. The recharge pad concept has not been proven effective. How would the flood storage system work during a series of storms with frozen ground? If the pad is a redundant system, how will 26 acres of wetland compensate for the loss of 32 acres especially for storms in excess of 1 inch.

A number of comments questioned the technical accuracy of the applicants hydrologic calculations, methods and base assumptions. One hydrologist representing the opposition submitted his independent calculations, using somewhat different base assumptions and methods. These comments are too numerous to list here. These and other technical comments were submitted to our Water Control Branch for review.

Another commentator referred to the Executive Order on Floodplains (E.O. 11988) that requires written justification for projects to be located in the floodplain. Sweden's Swamp is shown as floodway on the FIRM (1981) map.

Concerns were raised over the effects of lowering the water table in enhancement areas on adjacent off-site wetlands. These were also concerned over the loss of a wetland that believed by some to recharge a major aquifer and which is hydrologically connected to a potential surface water supply in Rhode Island (Turner Reservoir).

Many expressed concern over the loss of wetland for water quality renovation. Pollutant loading on the remaining wetland would be higher, increasing the rate of eutrophication.

The applicant's hydrology underestimates overbanking by streamflow. Therefore, contact between surface runoff and groundwater underestimated. Visual observations show that much more of the wetland is flooded by surface water than predicted. The applicants underestimated the amount of runoff contacting the wetland as diffuse flow, namely, runoff from surrounding development that is not intercepted by street drains or airborne contaminants or groundwater discharge and interflow.

The proposed wetland system is not proven to work for water quality renovation.

The use of emergent vegetation is not necessarily superior to woody vegetation and may be inferior. The greatest turnover and faster decomposition of emergents would release contaminants taken up in plant tissue at a greater rate than woody vegetation. Emergent species take up phosphorus and other substances and leach them or otherwise release them to the water column. The role of wetlands in water quality is not well understood so we should require 1:1 acreage for mitigation. Spreader berms and organic soils may erode. Therefore, sheet flow will not be attained. Proposed surface water routing is not maximized. Seepage from 1/2 mall pad would only contact a small portion of wetland near I-95.

Marsh communities would succeed to swamp without maintenance. Erosion and sedimentation during construction may result in a release of metals and other toxics to downstream waters. Opportunities for contaminants to absorb to wetland soils would be reduced.

Evidence submitted by the applicants should be a mass balance of inputs and outputs. There is not enough information to predict surface water regime and therefore, success of plantings.

Use of Exxon and Adamus evaluation models shows pre- and post-construction wetland value/acre for water quality maintenance would be about equal. Therefore, the decrease of wetland from 49.6 to 26.3 acres will cause concomitant decrease in pollution renovation value. Altered hydrology will make remaining wetland flashier, with greater and more frequent water level fluctuations, providing for more frequent flushing of contaminants from wetland.

The increased input of salts, oil and grease and other runoff contaminants could enter downstream supplies directly (into reservoirs) or via induced infiltration to wells.

Several commentators were concerned over loss of fish and wildlife habitat and food chain production. The wetland is large enough to provide relatively secluded habitat for songbirds and other wildlife. It provides good resting and feeding habitat during migration. The proposed wetland would be smaller and more prone to noise and visual disturbance from roadways and mall traffic. Existing forested wetland is excellent noise and temperature buffer, which will not be true of proposed wetland. Sweden's Swamp is one of the few forested habitats remaining in the vicinity.

Many commentators, especially local residents, expressed concern over increases in traffic noise, crime, air pollution and impacts on safety and aesthetics that the mall would cause. They were also concerned with property devaluation.

We also received a number of comments in support of the proposal including a petition with about 1800 signatures which was given to us during the public hearing on September 27, 1984.—These commentators supported the project because of the increase in job opportunities and the community's tax base. They currently have to travel 20-30 miles for quality shopping and would prefer to spend their money in their own community. Roadway modifications would end speeding and dangerous traffic on Rtes 1 and 1A. One abuttor claimed that complaints of flooding were exaggerated. Dumping had degraded the wetland's aesthetic quality and value for wildlife, water and air quality renovation. The swamp is a mosquito breeding area and a health problem. Youngsters used the swamp to experiment with dope and liquor.

RESPONSE TO COMMENTS

In our opinion, the project does comply with the 404(b)(1) Guidelines (33 CFR Part 230) with the inclusion of conditions to minimize adverse impacts (part 9 of this document). This decision is based on our belief that the environmental impacts are not significant, including impacts on wildlife habitat and water quality; that there are no practicable alternatives that would have less impact on the aquatic ecosystem; and that there is a need for the proposal. We agree that the proposed on-site mitigation would not fully compensate for the loss of wildlife habitat. In response to this concern, the applicants have developed a plan for additional off-site mitigation, in coordination with the Corps, EPA and the Fish and Wildlife Service. That plan, which would involve developing 35 acres of wetland and 17 acres of upland habitat on a highly disturbed area, is attached. This mitigation should prevent adverse individual and cumulative effects on migratory wildlife.

Regardless of how the applicants determine need, the Corps considers the need to be for those public benefits generated by the proposal, namely creation of jobs, increased tax revenues, and regional economic stability. The long-term success of the mall in providing these benefits, however, certainly depends on its economic viability.

The North Attleboro I site may include less wetland. However, we have not yet inspected the site to delineate Department of the Army jurisdiction. Our definition differs somewhat from both the Massachusetts and National Wetland Inventory definitions. However, we generally correspond closely with most types defined by NWI.

The North Attleboro I site is located 3 miles north of Sweden's Swamp on Rte 1, but is 7 miles north when travelling on I-95 and I-295, the major arterials.

North and South Attleboro are not the trade area's population centers. They only represent 8% of the trade area's population. With the exception of Woonsocket, most of the population is concentrated in the southern fringe of the trade area.

The rezoning request for the North Attleboro I site was denied on October 15, 1984 but was granted, on December 5, 1984. However, opposition may appeal to put the vote to a referendum.

A member of my staff attended a rezoning hearing in North Attleboro on September 11, 1984. About 90% of the 250-300 people present were opposed to the mall. At our public hearing for the proposed Newport Ave Galleria, about 15% of the 170 people in attendance were opposed to its construction. Based on these experiences, we believe that while these may be considerable support for a mall at that location, opposition to the North Attleboro mall is more widespread, at least at this time.

We agree that interest and efforts by another mall developer would seem to indicate that North Attleboro I is a practicable alternative. However, Frank Developers, Inc., Arlens, Inc., Rouse, Inc., the Edward J. DeBartolo Corporation and the present applicants, Pyramid Companies, have all considered that site and rejected it, largely due to its location, although other problems were cited. At this time, best information indicates that denial of this permit would not make North Attleboro I more, attractive to potential tenants.

The Rte. 6 commercial strip in Seekonk is not within the trade area. A mall at this site

would be directly competitive with the Warwick and Midland Malls.

The I-95/Rte 140 and I-95/I-495 locations are too far north to serve the major population centers of the trade area. (See part 7.)

The wetland is a not groundwater recharge but discharge site. This is documented by data collected by Goldberg and Zolno for an earlier proponent. Although a few exceptions exist, wetlands are not typically good recharge areas, because of their position in the landscape and impermeable soils. If wells were to be located within the wetland, pumping would most likely reverse groundwater direction, and the wetland would provide a recharge area.

The wetland's value for flow modulation and natural filtration are discussed in part 8. Both functions are presently limited and would be mitigated.

The applicant's submitted adequate hydrologic data to assess pre- and post-construction conditions. Data submitted includes stormwater runoff rates; drainage and exfiltration system capacities; a water budget analysis; long-term maintenance plans, etc. They also submitted input/output data on contaminants in urban runoff over 3 separate rainfall events in 1984. We did not submit the hydrologic information to EPA because as the lead federal agency in flood control, we have expertise to evaluate this information. We were delayed in sending the water quality data, so that EPA did not have opportunity to review this data prior to commenting.

We have reviewed calculations submitted by both the applicants and the opposition.

The opposition's calculations predict surface water elevations 6" higher during the 1" design rainfall than the applicants predicted. Thus, more stream overbanking (important to water quality renovation) would occur than estimated by the applicants' engineers. Generally, other differences between the applicant's and opposition's calculations were in fractions of a foot and, in some cases, fractions of an inch. We do not think that the methods used or resolution (1' contours) of the base maps upon which the calculations were based are sensitive enough to conclude that a fraction of a foot represents a real difference. This is within the error of the method of measurement.

Actual observations of surface flooding in other areas of the swamp are more likely attributed to ponding of direct precipitation and that portion of the watershed's runoff entering the wetland as diffuse flow. The applicants have always asserted that runoff from about 30% of the watershed, including the I-95 interchange, residential areas north of the wetland and the wetland itself, enters the wetland as diffuse flow.

In assessing the impacts on water quality, we believe that the major issue is what portion of the watershed's runoff, especially from developed areas, contacts wetland, rather than how much of the wetland is being contacted. If runoff from most of the developed watershed bypasses the wetland, then most of the contaminant loading on the watershed is also bypassing the wetland.

The 100-year flood would only cause a small rise in surface water in the west swamp. For example, an 0.4 foot rise over the 20 acre west swamp represents about 2.4 inches of runoff from the contributing 40 acre watershed for that section of the swamp. Six inches of runoff would cause a 1 foot rise. Once again, such precision is difficult with 1' topographic mapping.

The recharge pad is a relatively new idea. Calculations submitted by the applicants in-

dicate that it should work. It is a relatively simple system based on natural forces regulating groundwater flow.

The recharge pad is also a redundant system. Compensating storage would be provided in the enhanced wetland through excavation and detention. Presently, groundwater elevations in the east swamp range from about 77 to 73. The higher groundwater elevations are upslope and perched in the wetland soils, which have very low hydraulic conductivity, and act as an obstruction to groundwater movement. Excavation to elevation 73.5 will remove this obstruction to flow. The groundwater levels will be determined by the invert of the pipe outlet (73.1) and ground surface elevations. Compensatory storage calculations were done on this basis. Most ground surface elevations would be lower (73.5 to 74), with the exception of the 4 acres of wood swamp to remain at elevation 75.5 to 76. As mentioned above, the wetland soils generally have a low hydraulic conductivity. However, the upper foot or two in any wetland system has relatively high lateral conductivity because water can move along root systems. To prevent drying in the upper peat layer, these areas would also be bermed with pressure-treated lumber to block groundwater flow in the upper peat. The stream currently flowing into this area would continue to flow, maintaining the area's wetness.

Most mitigation measures should not require maintenance once established. The applicants would be required to monitor enhanced and new wetlands until the plant cover is established. Spreader berms would be constructed with pressure-treated lumber cores, and should not erode. The recharge pad itself has been designed with extra capacity. Its effectiveness would be diminished after about 600 years (even without sweeping and vacuuming mall parking lots.)

Controls such as sedimentation basins, oil and grease traps, etc. would require periodic cleaning. The applicants would retain ownership of the mall and be responsible for long-term maintenance.

The mall pad would work during periods of frozen ground. Thirty-inches is the average depth of frost in the Providence area (Geraghty, et al, 1973) and perforated pipes would be set with their bottom elevation 3.5 to 4.0 feet below the ground surface.

The applicants did not submit a mass balance for urban runoff contaminant loading. However, the input/output data they collected in 1984 showed two things. First, runoff from about 70% of the watershed (all 70% of which consists of residential and commercial development) is of fairly good quality. Second, the quality changes little between inflow and outflow, indicating that the wetland is not presently doing much to renovate water quality. EPA's Nationwide Urban Runoff Program gives us additional information on the types of contaminants generally found in urban runoff. While it is true that little data exists for wetland treatment systems for urban runoff, the applicants have followed the most important design criteria according to EPA Summary Report 600/52 83-026. That is, they have maximized transport of contaminants to binding surfaces (soil, vegetation, etc.) so that sorption and microbial breakdown processes can occur. This is best accomplished by slow overland flow in a thin sheet or by infiltration. At least two EPA funded studies on use of wetlands to treat urban runoff are currently underway. Other studies have examined use of wetlands for wastewater treatment.

We cannot comment on use of the Exxon model to evaluate the wetland's value for water quality. However, some of our staff have participated in workshops and training courses on the Adamus technique with the developer of that methodology. The water quality sections of that model are not very comprehensive, contain some inaccuracies and are currently being redone.

A recent literature survey for the Army Engineer Waterways Experimental Station (Nixon, 1983—in draft), identified 28 major pathways for contaminant movement through wetlands. Shortcomings in existing literature on this subject were also identified. Dr. Nixon indicated that most studies have only examined one part of the wetland system, and restricted data collection to one or two pathways represented in that portion of the system. For example, certain studies indicate that some marsh plants act as nutrient "pumps". That is, they take nutrients from the sediments and release them to the water column through leaching or other processes. This would seem to indicate that the change from wood swamp to a marsh system would not enhance and may adversely affect the water quality maintenance function of the wetland. However, these studies have not examined the fate of leached substances. Do they react with other substances in the water and precipitate out of the water column. Do they re-sorb onto plant tissues or onto sediments? The rate of such pathways differs from system to system according to site specific factors, so that the best information is derived from site specific input/output studies.

The remaining 26.3 acres of wetland should not on the whole, be "flashier". Although detention area is decreased, overall detention volume would not be decreased. Also, because of the small size of the watershed, there is not much water moving through the site in most years.

In the past, urban runoff has seriously degraded water quality in some areas, such as the effect of the Warwick and Midland Malls and I-95 on Narragansett Bay. However, these developments were built prior to use of the standard urban runoff controls typically used today.

We believe that the quality of water leaving the site after construction would be as good or better. Neither Turner Reservoir nor Narragansett Bay should be affected. The reservoir is located with abundant industrial, commercial and residential development, a racetrack, a golf course, a sewage treatment plant, and a good deal of Pawtucket, and East Providence either surrounding it or immediately upstream.

The developed portion of the watershed which is responsible for generating most of the contaminants in runoff, would be increased by 50 acres or about 10%. Runoff from this area will have the benefit of sediment traps, oil and grease lids, and the gravel filter provided by the recharge pad. Much of the existing wetland is not receiving contaminants and excess nutrients now, and there is no information to indicate that those areas that do receive contaminants are acting to their full capacity. Therefore, it is unlikely that the rate of eutrophication in the remaining wetland system would noticeably increase.

The sediment retention capacity of most of the remaining wetland areas would be increased through excavation. The capacity of the existing wetland for water quality renovation or flooding is unlikely to improve over-time due to natural succession. Red

maple stamps generally represent a late seral stage in wetland development. Peat, and the existing ground surface, is most likely in equilibrium or accreting, so that flood storage, overbanking, etc. would remain the same or decrease. The wetland has a high potential capacity to renovate water quality, but without active management, this potential would not be realized. The likelihood of such management is slim.

The permit would be conditioned to require the applicants to complete the archaeological data recovery program on Knoll C prior to construction in that area.

We do not believe that an Environmental Impact Statement is required. Our reasons are outlined in part 12 of this document.

We have coordinated with the Fish and Wildlife Service on the amount of acreage remaining after construction. Twenty six acres would remain.

The sites value for open space and recreation are addressed in part 3 of this document.

Noise impacts are addressed in part 8.

Imports on other business districts are addressed in part 8 and in the General Evaluation of this part of the document. Comments concerning the purpose and intent of Section 404 of the Clean Water Act are also addressed in the General Evaluation.

As a regulatory agency, we try to administer the program equitably. We weigh a proposal's benefits to the general public much more heavily than benefits to an individual. Those benefits would include employment opportunities, tax revenues, etc. We also consider the proposal's detriments on public resources, such as losses of wetland functions. The project, with both on and off-site mitigation would benefit a very large sector of the overall public while neutralizing most of its detriments. Residents abutting the mall would be subject to some detriments, namely reduction in available open space and increased traffic along Rtes. 1 and 1A, especially between I-95 and the mall entrances. Also, the aesthetic value of the area would be lost for those abutters who prefer the natural setting. However, the developer would minimize adverse effects for those abutting the site, through landscaping.

We often recommend that our applicants minimize fills in the aquatic ecosystem first. Our second recommendation is that they remain as flexible as possible in their design details to allow alteration to resolve issues that may arise during the public comment period. Many issues can be addressed through such design changes. This is the first time we have received criticism for recommending flexibility. Generally, we are criticized for issuing public notice plans that cannot be adjusted.

The economic viability for the project is documented by a market analysis and two sets of employment projections. The need for the proposal, in terms of the amount of new business generated as opposed to simply transferred, is addressed in part 10 of this document.

The proponents would provide their own security services and would fund necessary roadway modifications. The site was sewered by the City years ago in anticipation of the earlier mall proposals. The types of jobs generated can largely draw from the present unskilled workforce. Higher management for department stores often rotate duty stations at regional stores on a periodic basis, so they are unlikely to move into the area. Therefore, the proposal is unlikely to cause enough in-migration to drain educational services. The City may have to reopen

a recently closed fire station for that district. This fire equipment and personnel would be available for the entire neighborhood, not just the mall. The mall itself would incorporate standard sprinkler systems, etc.

Our best information in the form of comments a petition, a marketing analysis and response to our Public Hearing is that most residents would use the mall.

d. General Evaluation:

(i) The relative extent of the public and private need for the proposed work.

The private need is for the applicants to recoup their investment and to realize a profit.

The public need is for more convenient shopping opportunities and for competitively-priced goods. The applicants have provided data indicating that the trade area is understore by 1,000,000 square feet for a certain range and quality of shopping goods. The closest stores providing such a range of goods are at the Warwick, R.I. Malls and the South Shore Plaza in Braintree, Mass. Discounters, such as Zayres or Apex, provide a different type of goods and create a different market.

Much more important in terms of public need is the direct and indirect socioeconomic benefits and detriments generated by the proposal. Separate estimates by the applicants and by the city community development agency indicate that the mall would generate between 1500 to 2250 permanent job opportunities⁴ and $\frac{1}{2}$ to 1 million dollars/year in tax revenues. Regional economic activity would increase, adding to economic stability.

It is important to assess how many of these benefits are new and not simply transferred from another trade area. The applicants estimate about \$125,000,000 or about 3.0% of the total household income of the trade area is presently leaking to other markets by trade area residents. The mall would provide only 700,000 ft² or 70% of the estimated leasable floor space the trade area could support. Also, many residents on the fringe of the trade area would probably continue to shop at established malls. The applicant estimates about 50% or \$62,500,000 of the present sales leakage would be transferred to the new facility, so that 50% will continue to leak to outside areas. The applicants estimate that the region surrounding the trade area supports \$4,000,000,000 in retail sales, so that the sales transferred to the mall represent loss of about 1.5% of sales for surrounding market areas. This average loss of retail sales would vary somewhat with distance, but is still too small to cause existing stores to reduce their staffs. Also, there has been a general increase in the number of households and a substantial increase in the average household income within the trade area since 1970, increasing the spending power of trade area residents. Most facilities' annual sales are currently increasing from year to year. These trends should more than balance any loss of sales.

The applicant conservatively estimates that the mall would increase retail sales by \$25,000,000. This represents an increase in spending of only 0.6% of the average household income or about \$120/year/household. The applicants have also indicated that their potential tenants have stores located in surrounding trade areas but have no in-

tention of closing their existing stores. These stores will open new branches.

The City of Attleboro anticipates a loss of some retail trade from their central business district, but an increase in sales for existing strip development along Rtes. 1 and 1A, as discussed in the Assessment of Impacts. Recent changes in downtown Attleboro should create new sources of trade to offset trade losses in the CBD.

The State of Rhode Island has expressed concern over loss of retail sales to their nearby CBD's, but provided no data on existing retail sales or anticipated losses.

Some local merchants may want to relocate to the mall. But, in many cases, they may want to open satellite stores. Relocations would be distributed among the closest market areas. The mall would provide space for some service-oriented businesses, such as real estate, travel, and dental services. However, there would be only one facility for each type service, which should not cause a substantial impact on this type of market since trade in this type of business is already distributed among a large number of small operators.

Much of the above data was submitted by the applicant. Some was submitted by the city. All data was reviewed by Corps staff and considered reasonable. The applicants have supported their statements with appropriate demographic data taken from such sources as the 1970 and 1980 Census on Population and Housing, the Southeastern Regional Planning and Economic Development District, etc.

Assumptions about percentage of income spent on shopping goods, number of jobs created, etc., are those normally used for such marketing studies in our experience.

On the other hand, there is a public need for open space and those natural values provided by wetlands, especially in developing urban areas. The values provided by the existing wetland are analyzed in the Assessment of Impacts. We believe that the applicants can replace the water quality maintenance and flood control values of the wetland on site. Fisheries habitat would be increased. With the inclusion of off-site mitigation, the value of the property for wildlife would be more than replaced, with additional benefits of increased water quality maintenance and flood storage in a different part of the watershed.

Open space at the project site would be reduced. Open space would be replaced through off-site mitigation, but for a different community. However, a majority of the Attleboro citizens have indicated their willingness to accept this trade-off through their support of the project.

(ii) The practicability of using reasonable alternative locations and methods to accomplish the objective of the proposal structure or work.

We do not believe any reasonable, practicable alternative locations or methods to accomplish the objective of the project presently exist.

(iii) The extent and permanence of the beneficial and/or detrimental effects the proposed structures or work may have on the public and private uses to which the area is suited.

Through mitigation, the applicant would retain most of the public uses to which the area is suited. They have maintained and in some cases enhanced public uses such as water quality renovation, flood storage, wildlife and fisheries habitat. The mall would have a permanent adverse impact on open space, passive recreation, and, for

⁴ Range of estimates reflects different assumptions on the ratio of full time to part-time jobs (shifts) and spin-off jobs and is based on 1 person/500 ft² and $\frac{1}{2}$ spin-off/1 retail job.

some, aesthetic values for the surrounding neighborhood.

The suitability of the site for these areas, as discussed above, is already somewhat degraded by unauthorized dumping which would most likely continue in the future.

The mall would present a different aesthetic perception, which for some people, would be preferable. It would also provide a source of "recreation", though of a different type.

The remaining "enhanced" wetland would be accessible for controlled pedestrian traffic, and, though smaller, would have value for wildlife observation and education, as well as wildlife and fisheries habitat, water quality renovation and flood control.

SUMMARY

The objectives of the Clean Water Act have always been a controversy. Some claim that the thrust of the Act is restoration and maintenance of water quality. Others claim its main purpose is wetlands protection. The objectives of the Act as outlined in its introduction, are reproduced below.

We must identify those functions provided by the wetland that contribute to its public value, and weigh the loss of those values against the public benefits that would, to our best estimation, be provided by the project. If the purpose of the Act were to simply protect wetlands to the exclusion of other considerations, there would be no need for a permit process.

When a wetland does not provide public values, or when those public values can be maintained or replaced, then there is no purpose in denying the permit and losing the public benefits that could be provided by the project.

We believe the applicants have largely maintained or replaced, and in some cases, enhanced those functions contributing to the public value of the wetland. Furthermore, they have clearly demonstrated that their proposal will not only have private and substantial public benefits. We also believe they have demonstrated that these benefits can only be successfully provided at the Sweden's Swamp site.

Even without off-site mitigation, we do not believe the wetland loss individually or cumulatively is sufficient to warrant requiring an EIS. The value of the wetland in providing most of those functions important to the quality of the human environment is low and should be compensated on-site with the original design. An exception would be its value for wildlife, which is fairly high. However, the types of species associated with this habitat would generally use mesic (moist) upland forest as well. Aerial photographs and land use maps indicate that this type of habitat is abundant in Attleboro and the vicinity, and that loss of this amount of wetland would not cause significant decreases in these wildlife agencies.

We would not issue this permit if we believed that practicable alternatives existed. Therefore, issuance of the permit would not set a precedent for violating the 404(b)(1) Guidelines.

The project and its anticipated effects on the quality of the human environment has been controversial. However, the controversy has been given ample public process through the State EIR, adjudicatory hearings, our own public notice and public hearing, and a special technical workshop for the applicants, opposition and the Corps. Issues raised during our review were substantially similar to those raised during the ongoing state process. We believe the major issues have been adequately addressed and

that the project would not have a significant adverse effect on the quality of the human environment.

The North Haven Mall proposal bore similarities and differences to this proposal. One difference was that the North Haven Mall would be located in a major floodplain with compensatory storage. This proposal is not within a major floodplain and compensatory storage has been provided.

Also, the North Haven Mall proponents are dependent on the CT Department of Transportation to provide an Interchange on I-91 for access to their site. Pyramid would provide the necessary roadway modifications themselves, ensuring traffic and related impacts are minimized.

During 1982, the DeBartolo Corporation had reduced the wetland impacts of their proposal by revising their project to include parking garages. In 1983, several weeks before they withdrew the proposal, we had made a preliminary decision *not* to require an EIS because of the modifications.

13. I have considered all factors affecting the public interest including conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage protection, land use classifications, navigation, recreation, water supply, water quality, public safety, energy needs, food production, and in general, the needs and welfare of the people. After weighing favorable and unfavorable effects as discussed in this document, I find it in the public interest to issue this permit.

Division Engineer.

Mr. STEVENS. Mr. President, I joined with 23 other Senators to urge that Robert Dawson's nomination be brought before this body. I am pleased to have the opportunity, now, to speak in support of his confirmation. Mr. Dawson has been Acting Assistant Secretary for Civil Works since May 1984. Before that, he was Deputy Assistant Secretary for 3 years. He has demonstrated his ability, running the Army's civil works programs with distinction.

The issue has been raised here about the way in which the Corps of Engineers section 404 program will be administered. First, let me point out that this is not the only task Bob Dawson faces as Assistant Secretary. On top of building and maintaining dams, harbors, and navigation channels, he oversees emergency responses—an example of which we had at our own doors just a few weeks ago, with the flooding of the Potomac.

Controlling wetlands through section 404 permits is an important part of the job done by the Corps of Engineers. Any fears that Mr. Dawson is charting his own course for this program should be dismissed. He will carry out policies outlined by the Reagan administration. A commitment to regulatory reform has reduced the average processing time for permit applications from 140 to 70 days. This has been accomplished without compromising the quality of decisions.

At the same time, input from other agencies is increasing. Mr. Dawson has negotiated Memorandums of Agreement on permit procedures with the

Department of the Interior and the Environmental Protection Agency. Negotiation of a similar agreement with the Department of Commerce is underway. These agreements should reduce the burden on applicants, while giving the agencies greater assurance that their input is included in the permit decision.

Since a significant portion of my State is classified as wetlands, the section 404 program has a major impact on development in Alaska. We have benefited from the reduction in permitting delays. At the same time—in each case brought to my attention—the corps has drawn upon the recommendations of other agencies, and has carefully weighed the environmental impact of the project.

Robert Dawson has proved himself a talented and capable administrator. He has established a record of careful compliance with environmental laws while continuing efforts to reduce unnecessary regulation. He is a wise choice as Assistant Secretary for Civil Works. I urge support of his nomination.

Mr. SYMMS. Mr. President, I reserve the remaining time for proponents, for the distinguished President pro tempore of the Senate, Senator THURMOND, who will be in the Chamber shortly.

I thank my distinguished colleague from Rhode Island for his courtesy in yielding the time to me at this point so that I can attend a meeting at this time.

Mr. CHAFFEE. Mr. President, I yield 5 minutes to the distinguished Senator from Wisconsin.

Mr. PROXMIRE. I thank my good friend from Rhode Island.

I also thank the Senator from Maine for his patience in permitting me to proceed at this time.

Mr. President, I rise in opposition to the nomination of Robert K. Dawson to be Assistant Secretary of the Army for Civil Works.

Like both Interior Secretary Watt and EPA Administrator Gorsuch before him, Mr. Dawson is opposed to much of the program he supposedly administers. But unlike those two environmental mavericks, Dawson already has a record on which we can predict his future actions in his new job. No guesswork is needed for predicting his performance. Unfortunately, we know it all too well.

Since 1981, first as Deputy Assistant Secretary and then as Acting Assistant Secretary, Dawson pursued a relentless course aimed at dismantling the environmental portions of the very wetlands programs he was appointed to protect.

It is good to hear the Senator from Louisiana point to one exception to this, but the exception certainly does not prove the rule.

Instead of safeguarding our precious wetlands resources, Dawson takes every opportunity to proclaim his lack of responsibility for most of the program.

According to his theories, Congress never intended creation of a wetlands program in enacting section 404 of the Clean Water Act. To ensure the success of his point of view, as Deputy Assistant Secretary he proposed changes in the Army Corps' wetlands regulations which would have effectively removed Federal protection from two-thirds of the Nation's wetlands.

Fortunately, this protection has since been reaffirmed by congressional action and Dawson's theories repudiated by the courts; yet he has not backed off from his wetlands views.

The Wisconsin Secretary of Natural Resources shares my opposition to this nominee. According to his recent letter to me:

The State of Wisconsin, Department of Natural Resources has actively opposed the dismantling of the 404 wetland dredge and fill program which has been occurring over the past several years under the direction of Mr. Dawson. We have submitted extensive comments in opposition to the "regulatory reform" rules but have not received cooperation or explanation from the Department of the Army concerning their purported "streamlining" of the 404 program. We fully concur in your assessment that the rules which have already been adopted seriously undermine the 404 program.

We are also very concerned about a new set of "final 404 regulations" which have been prepared by the Department of the Army under the guidance of Mr. Dawson. We have made numerous attempts to obtain copies of these proposed rules but have not received any cooperation from the Corps of Engineers or the Department of the Army. The Corps of Engineers staff has advised us that these rules, if published, will be in final form and that the States and other interested parties will not have an opportunity to comment on these regulations. We have reason to believe that these regulations will result in the further dismantling of the 404 program and will virtually eliminate effective participation by the States and other interested parties in the 404 permit process.

I ask unanimous consent that the full text of this letter from Secretary Carroll Besadny be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. PROXMIRE. Mr. President, this opinion is shared by major environmental groups, such as the National Audubon Society, American Fisheries Society, Bass Anglers Sportsmen Society, Environmental Defense Fund, Izaak Walton League, Sierra Club, Environmental Policy Institute, Coastal Alliance, and National Wildlife Federation, which all actively oppose Mr. Dawson's nomination.

Why do they share my opposition? The reason is simple. In action after action, Dawson demonstrated open

hostility toward his wetlands jurisdiction.

Aside from his attempts to exclude millions of acres from section 404 jurisdiction, he thwarted protective efforts by the EPA and the Fish and Wildlife Service, the agencies which share wetlands jurisdiction with the Corps.

He also tried to change the standards for determining wetlands, thereby exempting destructive activities from his regulations. He would reduce requirements for preparing environmental impact statements. He would otherwise weaken the only Federal program which safeguards the precious wetlands resource.

Mr. President, why am I making such a big deal about a program for saving a few ducks? Because wetlands provides much more than just vital habitat for migratory birds and other animals. Wetlands hold back flood waters. It prevents damage to people and property. It cleanses polluted waterways. It provides recreation from hunting to birdwatching. It contains the breeding grounds for many fish species. In fact, wetlands are some of the most valuable and productive lands around. They generate between \$20 and \$40 billion a year in economic activity.

Yet, the United States is losing wetlands at the alarming rate of about 450,000 acres per year. If we are to have any wetlands left, the Army Corps of Engineers must effectively enforce the Section 404 Program. Robert K. Dawson is not the man for that job, and I urge my colleagues to reject his nomination on that basis.

EXHIBIT 1

STATE OF WISCONSIN,
DEPARTMENT OF NATURAL RESOURCES,
Madison, WI, November 4, 1985.

In reply refer to: 8300.

HON. WILLIAM PROXMIRE,
U.S. Senate, Washington, DC.

DEAR SENATOR PROXMIRE: I have received a copy of your letter to Senator Robert Dole referring to your opposition to the confirmation of Robert K. Dawson to be Assistant Secretary of the Army (Civil Works).

I would like to thank you for taking the position that you have on this issue and encourage your continued opposition to this nomination.

The State of Wisconsin, Department of Natural Resources has actively opposed the dismantling of the 404 wetland dredge and fill program which has been occurring over the past several years under the direction of Mr. Dawson. We have submitted extensive comments in opposition to the "regulatory reform" rules but have not received cooperation or explanation from the Department of the Army concerning their purported "streamlining" of the 404 program. We fully concur in your assessment that the rules which have already been adopted seriously undermine the 404 program.

We are also very concerned about a new set of "final 404 regulations" which have been prepared by the Department of the Army under the guidance of Mr. Dawson. We have made numerous attempts to obtain copies of these proposed rules but have not

received any cooperation from the Corps of Engineers or the Department of the Army. The Corps of Engineers staff has advised us that these rules, if published, will be in final form and that the States and other interested parties will not have an opportunity to comment on these regulations. We have reason to believe that these regulations will result in the further dismantling of the 404 program and will virtually eliminate effective participation by the States and other interested parties in the 404 permit process.

I would appreciate any assistance you could provide in requiring a full opportunity for review and public participation in any future rulemaking by the Department of the Army. I also urge you continued opposition to Mr. Dawson's nomination and hope that the Senate can impress upon the Department of the Army its responsibility to faithfully carry out the requirements of the Clean Water Act.

Sincerely,

C.D. BESADNY,
Secretary.

Mr. CHAFEE. Mr. President, I thank the distinguished senior Senator from Wisconsin for that powerful statement and for the thoughtfulness he has brought to this matter and for pitching in on this effort.

I yield 18 minutes to the Senator from Maine.

Mr. MITCHELL. I thank the Senator from Rhode Island.

Mr. President, I oppose the nomination of Robert Dawson to the position of Assistant Secretary of the Army for Civil Works. I do so after concluding that Mr. Dawson has not, as Acting Assistant Secretary, and will not, if confirmed, implement the law as required by section 404 of the Clean Water Act.

Section 404 of the Clean Water Act provides a program for permitting the disposal of dredge fill or material around or in our Nation's waters. Administered by the Army Corps of Engineers, this section of the act was intended by Congress to be one of the most important methods of stemming the loss of valuable wetlands in the country.

Few Americans would disagree that wetlands are of national importance. Water fowl and other water birds are extremely dependent on wetlands throughout their life cycles, as are many fur-bearing animals. It is estimated that nearly two-thirds of the fish caught by American commercial fishermen are dependent on estuarine areas and their associated wetlands. These areas also buffer the effects of storms, purify water, aid in ground water recharge and provide substantial flood control. The State of Maine benefits enormously from its wetlands. Fish and wildlife nurtured by wetlands provide recreational hunting, fishing, and trapping opportunities for nearly 40,000 people in our State.

Wetlands are also vital to the commercial fish and shellfish industry in Maine. Wetland tidal flats represent 48 percent of the intertidal habitats of

Maine. Fisheries of the tidal flats rely heavily on organic material from adjacent coastal, estuarine, riverine, and salt marsh habitats. As a result, many of Maine's commercial fish species, including herring, mackerel, smelt, hake, scup, menhaden, flounder, cod, had-dock, and perch are dependent upon wetlands for various stages in their life cycles.

The rate of destruction of wetland areas should truly alarm every Member of this Senate. Each day, today, tomorrow, the day after, this Nation loses almost 1,000 acres of wetlands to dredging, filling, draining, and impoundment. We now are losing wetlands at a rate of over 300,000 acres per year. More than 100 million acres—nearly half of the wetlands once found in the lower 48 States—are now gone. We must as a nation review our efforts to save these precious resources. However, under Mr. Dawson's stewardship of section 404 of the Clean Water Act, just the opposite is occurring. The controversy surrounding the section 404 program has increased dramatically in recent years. The Fish and Wildlife Service, Environmental Protection Agency and conservation groups have contended that the program is not protecting wetlands as the law has intended.

Evidence provided at four oversight hearings held by the Subcommittee on Environmental Pollution supports those contentions. Senator CHAFEE and I conducted those hearings in an effort to determine whether section 404 is being effectively administered by those individuals and agencies charged with responsibility for the program. The hearings did not provide that reassurance. In fact, the evidence is to the contrary.

Mr. Dawson's reluctance to assert jurisdiction over isolated wetlands is an important case in point. Isolated wetlands such as prairie potholes are among our most important natural resources, providing millions of acres of migratory bird habitat. Congress has clearly stated and the courts have consistently ruled that these areas are to be regulated under section 404 to the limits of the commerce clause of the Constitution.

Yet, in a letter to me dated October 11, 1985, Mr. Dawson states that an isolated pond of over 30 acres is not within section 404's jurisdiction. He takes this position notwithstanding documentation by the U.S. Fish and Wildlife Service that the area has provided habitat for over 50 species of migratory birds protected under the Migratory Bird Treaty Act.

In order to fully understand this problem, some background is necessary. When Congress passed the Clean Water Act in 1972, including section 404, the term "navigable waters" was used to describe the geographic limitation of the act. Section 404 prohibits

the discharge of dredged or fill material into "navigable waters." "Navigable waters" is defined by the act to mean "waters of the United States." As stated by Mr. DINGELL on the floor of the House in 1972, the latter term was intended to mean "all waters of the United States in a geographic sense." The conference committee report on the 1972 act stated that:

[T]he conferees fully intend that the term "navigable waters" be given the broadest possible constitutional interpretation. . . .

Federal courts subsequently have ruled that in passing the Clean Water Act Congress asserted Federal jurisdiction over all waters of the United States to the fullest extent of legislative power under the commerce clause of the Constitution. For example, in *United States against Ashland Oil & Transportation Co.*, the Sixth Circuit Court of Appeals ruled in 1974 that the phrase "navigable waters," as used in the Clean Water Act, was intended to reach to the very limits of commerce clause authority.

This same principle has been applied to section 404. For example, in *United States against Holland*, also decided in 1974, a U.S. district court judge ruled that traditional notions of "navigability," tied as they were to such artificial limits as the mean high tide line, were abolished by the Clean Water Act of 1972. The courts were recognizing that the 1972 act represented a new approach to water quality that, in the words of the 1972 House committee report, focused on the "natural structure and function of ecosystems." Quoting the Senate Public Works Committee report on the 1972 act, which said, "Water moves in hydrologic cycles and it is essential that discharge of pollutants be controlled at the source," the courts ruled that the geographic limits of the Clean Water Act and section 404 extend to the outer bounds of Congress' power to regulate commerce among the States.

Although the intended scope of the new Clean Water Act was not lost on the courts it was apparently lost on the Army Corps of Engineers which continued to use the mean high water line as the limit of its jurisdiction under section 404. As a result, the Natural Resources Defense Council and the National Wildlife Federation took the corps to court. This led to the decision in *NRDC against Callaway*, in 1975, ruling that the 1972 Clean Water Act:

Asserted federal jurisdiction over the Nation's waters to the maximum extent permissible under the Commerce Clause of the Constitution. Accordingly, as used in the Water Act, the term is not limited to the traditional tests of navigability.

Two years after the *NRDC against Callaway* decision, Congress revised the 1972 act. At that time amendments were offered in this Senate to strip section 404 of most of its geo-

graphic jurisdiction over wetlands, particularly over so-called isolated waters (that is, those that have no regular surface connection to a stream system). These amendments were vigorously opposed by Members of both Houses who argued that wetlands are priceless natural resources that deserve the protection of section 404, and they were defeated.

These arguments against those amendments carried the day and while Congress made some amendments to section 404 in 1977 the geographic reach of that provision was left untouched. In other words, these statements undoubtedly reflected the sense of Congress that *NRDC against Callaway* had reached the right result and that all wetlands subject to Congress' power to regulate interstate commerce were also subject to section 404.

Those statements contained repeated references to the value of wetlands as habitat for migratory birds, particularly waterfowl, and as natural flood control devices. Those statements are important because many of the isolated wetlands that Mr. Dawson seeks to exclude from section 404 coverage perform exactly the functions that we thought were so valuable during the 1977 debates.

Nonetheless, in July 1982 the Army Corps of Engineers issued something called a general permit that applied to all isolated wetlands. A general permit is not really a permit at all. It is simply a device by which the Army excludes activities or wetlands from the requirement in section 404(a) that all discharges of dredged or fill material must be preceded by a permit issued by the Secretary of the Army.

By the Army's own reckoning the 1982 general permit excluded countless thousands of activities in isolated wetlands. Dischargers were free to destroy isolated wetlands, no matter how large or small, and to do so without even notifying the Corps of Engineers. Of course, the elimination of the need for a permit eliminated public notice and comment, eliminated knowledgeable comments by the Environmental Protection Agency, and the U.S. Fish and Wildlife Service, State conservation departments, and private conservation organizations, and eliminated any practical compliance with the National Environmental Policy Act or the Fish and Wildlife Coordination Act.

Predictably, the Army's wholesale abandonment of isolated wetlands led 16 conservation organizations to file suit challenging the general permit. After 2 years of protracted litigation in *National Wildlife Federation against Marsh*, the two sides reached a compromise under which all discharges affecting more than 10 acres of isolated wetlands would require an

individual permit and all discharges affecting between 1 and 10 acres of such wetlands would require pre-discharge notification to the corps with the possibility of an individual permit being required. Mr. Dawson personally approved this settlement and it was officially approved by the U.S. District Court. By virtue of subsequent regulations issued by the Army and signed by Mr. Dawson it became law.

One would have thought this settlement agreement would finally bring isolated wetlands into the section 404 permit program. But no sooner was the ink dry on the document that the corps began to express doubt that it had jurisdiction over these isolated waters in the first place. Nine years after NRDC against Callaway we were back where we started from. The corps was disowning isolated wetlands only this time with a new argument: The destruction of such wetlands supposedly does not affect interstate commerce.

As I stated earlier, Senator CHAFEE and I conducted four oversight hearings to explore concerns regarding the implementation of section 404. At those hearings, Mr. Dawson, representatives of the EPA, and of the U.S. Fish and Wildlife Service were repeatedly asked whether isolated wetlands which are used or could be used by migratory birds and waterfowl are subject to the jurisdiction of section 404.

During the course of the hearings, the Environmental Protection Agency seemed to have little difficulty in answering this question. EPA informed the subcommittee that yes, any wetland that is or could be used as a habitat by waterfowl and other migratory birds is subject to section 404 because destruction of that wetland affects interstate commerce.

EPA's position on this question is no small point. We are talking, of course, about whether isolated wetlands are "waters of the United States" within the meaning of the Clean Water Act. In 1979, Attorney General Civiletti rendered an official opinion that EPA has the ultimate administrative authority for determining what his phrase means in section 404 and the rest of the act. Although this opinion was rendered by President Carter's Attorney General, it has since been ratified by President Reagan's Attorney General. The opinion was cited by the Justice Department in a November 1984 brief filed in *United States versus Riverside Bayview Homes*, the first section 404 case ever to reach the U.S. Supreme Court. The opinion was cited to support an argument that EPA's determination of what constitutes a wetland should be approved by the Supreme Court.

We now had EPA, the final administrative authority on section 404's geographic jurisdiction over wetlands, agreeing that use or potential use of a

wetland by migratory birds was sufficient to create commerce clause jurisdiction. EPA rendered this opinion in a memorandum forwarded to the subcommittee.

At the last oversight hearing held on September 18, 1985 the U.S. Fish and Wildlife Service agreed that the EPA position represented administration policy. And at the hearing and in a letter to me dated September 16, 1985, Mr. Dawson gave every reasonable appearance that he also agreed.

I now quote from the transcript of that hearing. I asked:

Mr. Dawson my question to you is do you agree that the law states that if areas could or would be used by migratory waterfowl that is sufficient to establish 404 jurisdiction . . .

Mr. Dawson replied as follows:

I do agree with your interpretation of the case law that you mentioned. I was privy to the letter that Mr. Sanderson sent to you and fully endorse it as the position of the Administration, not just of the EPA.

I thought that we had made real progress on this issue at the hearings. Unfortunately, Mr. Dawson's agreement at the hearing has not been translated into effective enforcement in the field.

When Mr. Dawson reassured me and Senator CHAFEE that he agreed with EPA's position that migratory bird use creates jurisdiction over isolated wetlands, I questioned him regarding a decision, rendered 2 weeks previously, in which the corps had refused to assert jurisdiction over a 30-acre pond precisely because migratory bird use supposedly was not sufficient to create jurisdiction. This pond had been drained without a section 404 permit some months before. I asked him to check into the matter and provide a written response.

He did so in a letter to me dated October 11, 1985. To my surprise, Mr. Dawson informed me that he agreed with the district engineer's decision that destruction of the pond would have no effect on interstate commerce. This response surprised me because I know, and Mr. Dawson conceded in his letter, this pond is used by migratory birds.

Therefore, when Mr. Dawson says he agrees with EPA that use of an isolated wetland by migratory birds constitutes a sufficient nexus with interstate commerce to come within section 404, this is what Mr. Dawson really means: a 30-acre complex of pond and wetlands, which a U.S. Fish and Wildlife Service study found was used by 54 different species of migratory birds, including 53 protected by the Migratory Bird Treaty Act and including at least a dozen species of waterfowl that may be lawfully hunted, is not subject to the reach of Congress under the commerce clause and its destruction is not regulated by section 404. Regardless of what Mr. Dawson told the sub-

committee, he believes that not only did Congress not intend to regulate this pond's destruction but that Congress cannot do so.

Mr. Dawson's letter told me that the migratory bird use of the pond was too "trivial" even though the Fish and Wildlife Service study counted over 6,000 birds on the pond during a 13-month period including over 700 game ducks, the latter present during their migrations north and south.

Therein lies the crux of my inability to support Mr. Dawson's confirmation. His decision to exclude isolated wetlands as "trivial" is fundamentally wrong as a matter of constitutional law, science, and logic. Mr. Dawson's disagreement with me over the breadth of Congress' power to regulate interstate commerce may be of little moment in the present debate, but he also disagrees with Congress, the Supreme Court and lower Federal courts, EPA, and the Justice Department, as I will illustrate.

Of course, the Supreme Court is the ultimate arbiter of what the framers of the Constitution intended when they gave Congress the power to regulate commerce among the States. For the last 50 years or so, the Supreme Court has had frequent occasion to deliver opinions on the reach of the commerce clause. Since the 1930's, the Supreme Court has made it clear that Congress' power to regulate interstate commerce is literally "as broad as the needs of commerce."

For example, in the case of *United States versus Darby*, the Supreme Court ruled that even purely intrastate activities may be regulated "where they have a substantial effect on interstate commerce." Moreover, the Court ruled that even commerce of the smallest volume could be so regulated.

This latter principle was abundantly illustrated in *Wickard versus Filburn*, decided the following year. In that case Mr. Filburn was penalized \$117 for harvesting 239 excess bushels of wheat in violation of the Agricultural Adjustment Act of 1938.

The Supreme Court rejected Mr. Filburn's argument that home consumption of a minute amount of home-grown wheat escaped the reach of the commerce clause. In the Court's words, that Mr. Filburn's "own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of Federal regulation where, as here, this contribution, taken together with that of many others similarly situated, is far from trivial."

These principles have been reiterated by the Supreme Court ever since. In the 1968 case of *Perez versus United States*, the Court upheld the application of the loan-shark statute to a purely intrastate loan transaction

because Congress had found that loan-sharking activities as a class substantially burdened interstate commerce. The Supreme Court ruled that in such a situation, "the courts have no power to excise, as trivial, individual instances of the class."

If the Supreme Court holds that the courts have no power to excise supposedly trivial effects on interstate commerce then certainly Mr. Dawson also lacks that power.

Do these cases I have cited apply to section 404 and wetlands? The answer is clearly yes. EPA cited them in its memorandum explaining that migratory bird use created an interstate commerce connection for isolated wetlands. The Corps of Engineers cited them in 1977 in the preamble to the present regulations now in force which govern the definition of wetlands. In the section 404 case now before the Supreme Court, to which I previously alluded, the Justice Department argued that a broad jurisdictional test for wetlands is "consistent with the commerce clause principle that the triviality of an individual's intrastate act is irrelevant so long as the class of such acts might well have a nationally significant effect on interstate commerce," and cited *Wickard versus Filburn* for this conclusion.

Finally, the 10th Circuit Court of Appeals cited these Supreme Court authorities in the 1984 case of *Utah versus Marsh*, which upheld section 404 jurisdiction over an intrastate lake that has no tributaries to any other body of water and so ruled because migratory birds use the lake. The court referred to *Wickard versus Filburn* and said "the triviality of an individual's act is irrelevant so long as the class of such acts might reasonably be deemed nationally significant in their aggregate economic effect."

It should be clear from all this that Mr. Dawson, who is himself a lawyer, is flatly wrong when he says that migratory bird use of this pond is too "trivial" to be subject to Congress' control. In the view of the Supreme Court, the lower courts, EPA, and the Justice Department, there is no such thing as "too trivial" in this context.

Mr. Dawson's decision to exclude this 30-acre isolated water is troubling not only because the pond is so important but because it demonstrates that Mr. Dawson would abandon an important resource on the basis of a constitutional argument that is essentially frivolous. Although isolated, this pond is not unique. The same Fish and Wildlife Service study to which I earlier alluded also studied 21 other ponds in the vicinity. The wildlife biologist who conducted the study concluded: "There is no doubt that these ponds are valuable stopover sites for migrating birds, winter homes for northern birds and spring and summer nesting areas for many species."

Aside from these ponds, there are millions of acres of isolated wetlands in the United States. One example of this type of wetland is called the prairie pothole. There are about 3 million acres of these potholes which make up what the Supreme Court has called "the principle waterfowl breeding grounds in the continental United States." The Fish and Wildlife Service estimates that the pothole ecosystem produces over half of the newborn wild duck population each year. These ducks migrate throughout the continental United States. According to the Fish and Wildlife Service, "destruction of wetlands and other habitat is the single most important factor affecting duck abundance." Duck populations appear to be dwindling in part because of the destruction of wetlands. A story in the *New York Times* dated July 31, 1985, stated that the Fish and Wildlife Service has projected that this fall's duck migration may be the lowest on record and that the Service has proposed restrictions on hunting these birds. The Service has estimated that migratory bird hunting alone annually generates \$635 million in revenues and that 421,000 hunters cross State lines every year to shoot these birds. The birds themselves cross State lines, of course, a fact which led the Supreme Court to conclude that "the protection of migratory birds has long been recognized as a national interest of very nearly the first magnitude."

I am not alone in drawing these connections between wetlands, ducks, and the commerce clause. In the *Riverside Bayview* case, the section 404 case presently before the Supreme Court, the Justice Department made the same point in oral argument on October 16, 1985. The Government attorney argued that ducks and their habitat involve interstate commerce because of their relationship to hunting.

Many prairie potholes and other such wetlands valuable to ducks are smaller than 30 acres. Obviously even the piecemeal destruction of these areas leads to fewer ducks which will lead to less hunting which has an effect on interstate commerce. There can be no credible argument that Congress lacks authority to regulate the destruction of duck habitat no matter how trivial any single instance of such destruction may be.

Mr. Dawson's view of the commerce clause is seriously at odds with what Congress thought it was doing in 1977 when it rejected amendments to narrow section 404's scope. For example, the Senate Environment and Public Works Committee report thought it necessary to retain section 404 intact because wetlands "provide resting areas for a myriad of species of birds and wildlife." Senator Muskie, one of the primary sponsors of the act's reauthorization, echoed these

views on the floor. Senator Baker argued that wetlands are "priceless," in part, because they provide "essential resting and wintering areas for waterfowl." Senator STAFFORD noted that wetlands are "essential to the preservation of migratory and resident fish, bird and other animal populations." Many of these same quotations appear in the Justice Department's Supreme Court argument in the *Riverside Bayview* case and have been cited by lower courts upholding section 404 jurisdiction over wetlands.

I have discussed these matters at this length to make one point about Mr. Dawson: He has disregarded the law, a well-established law; he is ignoring the Constitution; and he has denied the will of Congress in his failure to protect isolated wetlands. Mr. Dawson is an officer of the Government who, when he took office, swore an oath to uphold the law. Regardless of how one feels about ducks, wetlands or the environment, section 404 is a law duly passed by Congress and signed by the President. As Acting Assistant Secretary of the Army for 14 months, it has been Mr. Dawson's duty to uphold that law. He has failed to do so. It is for that reason I oppose his nomination and I urge other Members of the Senate to do so.

This is an example, my colleagues, of where we cannot ignore the fact that for 14 months a person in office has simply refused to obey the law as passed by Congress, signed by the President, interpreted by the EPA, supported by the Justice Department, and decided by the Supreme Court in other Federal courts. And if one Federal official can say, "Congress doesn't matter, the Supreme Court doesn't matter, Federal courts don't matter, the EPA doesn't matter, the Justice Department doesn't matter, what I say about the law is what counts," then I say we do not have a nation under law.

I thank the Chair and I thank the Senator from Rhode Island.

Mr. CHAFEE. I thank the distinguished Senator from Maine for that powerful statement, so ably done, as is his fashion. I do hope many of our colleagues are listening.

Mr. President, how much time is left for the opposition?

The PRESIDING OFFICER. Eighteen minutes remaining.

Mr. HEINZ. Mr. President, I rise in opposition to the nomination of Mr. Robert K. Dawson to be Assistant Secretary of the Army for Civil Works. This appointment would place Mr. Dawson in the position of stewardship over many of our Nation's natural resources. Throughout the past 4½ years, as Acting Assistant Secretary and as Deputy Assistant Secretary for Civil Works, Mr. Dawson has demonstrated a patent disregard for the conditions of, and the laws governing, our

Nation's wetlands. In these positions, Mr. Dawson has misinterpreted essential statutes regulating wetlands, particularly section 404 of the Clean Water Act.

Let me present just a few examples to illustrate Mr. Dawson's record in this regard. In 1983, Mr. Dawson approved proposals under which approximately two-thirds of the wetlands in the lower 48 States, totaling more than 60 million acres, would be excluded from protection under section 404, which prevents discharge of materials into wetlands that will damage water supplies, wildlife, or recreation areas. This exclusion is particularly dangerous given Mr. Dawson's disposition toward regulations governing such discharges and toward other Federal and State agencies with which he has worked.

As an example, Mr. Dawson has refused to revise the Army Corps' controversial definition of wetland fill material which permits discharges of fill that are accidental or primarily to dispose of waste. In this refusal, he insisted that the Environmental Protection Agency [EPA] is responsible for regulating such discharges. The EPA maintains that it hasn't sufficient authority. Mr. Dawson pledged to work with the EPA and develop such a definition by June of this year. That pledge has yet to be fulfilled.

On other occasions, Mr. Dawson has acted in direct contradiction to his claim that EPA has authority under section 404. He has attempted to diminish the EPA's authority with respect to permitting wetland fills, despite the fact that section 404 clearly states that the corps is prohibited from issuing fill permits except in accordance with EPA regulations. Mr. Dawson specifically requested, in a 1982 letter to EPA Assistant Administrator Eric Eidsness, that the EPA limit its role to that of an advisory body in the permitting process.

In addition to regular conflicts with the EPA during his tenure, Mr. Dawson has provoked controversy within the Department of Interior as well as with environmental regulatory agencies in a majority of the States.

Mr. President, I believe that this type of conflict does a great disservice to the condition of our Nation's natural resources. It causes delays in implementation of statutes, and sends mixed signals to industry and to the environmental community. This confusion and delay has had a particularly adverse impact on our wetlands, which are disappearing at an alarming rate.

Conservation of wetlands benefits our environment in a variety of ways. Wetlands play an important role in ensuring the survival of many species of fish and wildlife, in maintaining and improving our water quality, and in recharging our vital underground water

supply. Let me call to the attention of my colleagues that our Nation's ground water supply is threatened on many fronts. Over 200 chemicals have been located in our ground water, only 18 of which are currently regulated. Contaminated ground water has been shown to have a connection with increased health hazards including cancer. Although regulation of ground water falls under the aegis of the EPA, Mr. Dawson's role in wetland management would have a direct influence on the quality of our ground water that is to be regulated.

Finally, Mr. President, I think it is important to view this nomination in light of our growing awareness of the fragility of our Nation's natural resources. In recent years, the Congress and the Reagan administration have shown heightened concern for the condition of our environment. The passage by the Senate of a greatly enlarged Superfund this September, stricter regulations for toxic waste disposal and management imposed by the Resource Conservation and Recovery Act amendments passed last October, and the reauthorization of the Clean Water Act by the Senate this June attest to the priority of this issue. Confirming the nomination of Robert K. Dawson to be the Assistant Secretary of the Army for Civil Works would be a step backward in the ongoing effort to preserve our Nation's environment. I urge my colleagues to join me in opposing this nomination.

Mr. CHAFEE. Mr. President, I yield myself 4 minutes.

Mr. President, those of us who are opposed to this nomination do not do so lightly. In the 9 years that I have been in this Senate, I have only once before opposed the nomination of the President of either party for an appointed post.

But, Mr. President, in this situation I think the time has come to blow the whistle; not subsequently when Mr. Dawson is in office and we find problems continuing to arise, and then we try to do something about it and find we are powerless to do so. We ran into this with Mr. Watt, when he was confirmed, and we ran into this with Mrs. Gorsuch, when she was confirmed. Later problems arose with both of these appointments and there was nothing we could do.

We know the record of Mr. Dawson because, as the distinguished Senator from Maine has previously pointed out, he has occupied this post for over 14 months.

Mr. President, the other day I laid out some of the reasons why I was opposed to the nomination of Mr. Dawson. Today, I would like to elaborate on those reasons with a full statement that, in the interest of time, I will submit for the RECORD.

For the past 6 months the Subcommittee on Environmental Pollution

has sought through its oversight processes to correct problems in administration of the section 404 program by the Department of the Army and its Corps of Engineers.

As Deputy Assistant Secretary of the Army for Civil Works from May 1981 to May 1984 and then Acting Assistant Secretary to the present time, Mr. Robert K. Dawson has been the one largely responsible for the corps' implementation of section 404 of the Clean Water Act. This permitting program, which regulates discharges of dredged or fill material in our waters, is the most important regulatory mechanism the Federal Government has to curb the unnecessary destruction of the Nation's rapidly disappearing wetlands.

The U.S. Fish and Wildlife Service estimates that nearly 60 percent of the original wetlands in the lower 48 States have been destroyed. From the mid-1950's to the mid-1970's, 11 million acres of wetlands were destroyed. That's more than 500,000 acres each year for 20 years. Since the mid-1970's, the Office of Technology Assessment reports that wetland destruction has continued at the rate of 300,000 acres per year.

The loss of millions of acres of wetlands over the past three decades already has caused serious, and perhaps irreversible, declines in our fisheries, shellfisheries, and waterfowl populations. For example, numbers of many species of ducks such as mallards and pintails are at their lowest levels in 30 years. Consequently we cannot afford to acquiesce to policies that undermine current law and allow the staggering pace of wetlands destruction to continue largely unchecked. To do so, jeopardizes the very existence of this Nation's fish, shellfish and waterfowl as well as the millions of dollars and jobs produced by the industries dependent on those resources.

Yet the policies initiated and supported by Mr. Dawson over the past 4½ years are aimed at making it easier to fill this Nation's remaining wetlands without the environmental scrutiny mandated by Congress under section 404. At nearly every opportunity, Mr. Dawson has gone out of his way to rewrite the law and legislative history by claiming that "Congress did not design section 404, to be a wetland protection mechanism and it does not function well in that capacity." Thirteen years after Congress passed section 404, 10 years after the landmark court decision in NRDC versus Callaway, and 8 years after Congress expressly stated that section 404 applies to wetlands without limitation, Mr. Dawson steadfastly continues to advocate that Congress did not have "wetland protection in mind" when it established and modified the program.

Mr. Dawson uses this demonstrably false view of section 404 to justify a wide range of policies that narrow the types of waters and activities regulated under the program, thereby frustrating the goals of the Clean Water Act. In doing so, he has provoked unprecedented levels of confrontation with the State and Federal agencies that share a role in the 404 program. Mr. Dawson's acrimonious debate with EPA and Interior Department officials belies his statements that he is doing nothing more than dutifully carrying out administration policy. For instance, in August 1984 Assistant Interior Secretary G. Ray Arnett wrote Mr. Dawson that "I am also disappointed that the changes I recommended in the MOA have been interpreted as contrary to the guidance of the Presidential Task Force Report on Regulatory Relief" and expressed the fear that Mr. Dawson was "following the task force recommendations without recognizing their dual goals." One month later Interior Secretary William Clark wrote in support of Mr. Arnett, stating that his wish was only to "bring environmental protection into balance with regulatory relief."

But Mr. Dawson has seen attempts by Interior and EPA officials to maintain environmental safeguards as efforts to undermine his own largely one-sided regulatory reform agenda. He argues further that, despite protests to the contrary by Interior, EPA, the States and the public, he has done nothing to compromise environmental protections under section 404 and that in fact these protections actually have increased during his tenure.

Mr. President, I believe Mr. Dawson's claims cannot withstand any rational, objective evaluation of his implementation of section 404. Mr. Dawson argues that section 404 jurisdiction over our Nation's waters has not been changed and that Army and EPA are closer than ever before to reaching a consensus on this issue. But, in fact, Mr. Dawson has been responsible for casting uncertainty over the types of waters and activities that are covered by section 404 and for allowing each of his district engineers to reach independent judgments on the extent of the congressionally established jurisdiction of the program.

Early in Mr. Dawson's tenure—January 13, 1982—the Department of the Army published a notice in the Federal Register which stated that "(t)he reform effort is targeted toward modifying the jurisdictional extent of the program." More than a month later the corps' Wilmington district engineer was forced to admit that "(t)he prevailing uncertainty over jurisdictional extent of the law is perhaps one of our own making because of our seeking, through nationwide permits and other means, a justification for limiting the jurisdiction of the Clean

Water Act to some boundary less than the full breadth of the wetlands found in the term 'all waters of the United States.'"

A little more than a year later, on May 12, 1983, Mr. Dawson personally approved proposed changes in Army's section 404 regulations that greatly heightened this uncertainty over the program's jurisdiction. His proposal defined terms within the regulatory definition of wetlands in a way that would exclude approximately two-thirds, or 60 million acres, of the wetlands in the lower 48 States from the jurisdiction of the Clean Water Act. This Dawson proposal was opposed strongly by 39 agencies in 33 States, by the EPA, by virtually every major national conservation organization, by many State and local organizations, by professional societies and by more than 1,000 concerned scientists, yet it still has not been formally withdrawn. Mr. Dawson's unstated intentions with regard to finalizing changes in the corps' regulatory wetland definition continues to this day the uncertainty over the extent of section 404's protection for our Nation's wetlands. For instance, I am sure my colleagues from Wisconsin will have quite a bit more to say about their State's concerns over Mr. Dawson's plans for his May 12, 1983 proposal.

Most recently, Mr. Dawson continued his efforts to cast doubt on the reach of section 404 over our wetlands when he volunteered at the first oversight hearing held by the Subcommittee on Environmental Pollution on May 21 of this year that "(t)he Congress has never addressed the issue of wetland jurisdiction. We believe the issue of wetland jurisdiction of the CWA demands appropriate legislative direction." Well, as I told Mr. Dawson at that time, I don't know who told him that, but he ought to read the legislative history of the 1977 Clean Water Act amendments. He might also try reading the recent Supreme Court brief of this administration's Justice Department which states that the "conclusion that it is 'not clear' that Congress wanted the corps to exercise the broadest possible jurisdiction over the Nation's wetlands is simply untenable when examined in light of the legislative history."

Nevertheless, 8 years after Congress expressly stated that section 404 applies to wetlands without limitation, Mr. Dawson maintains that the limit of Army's jurisdiction over wetlands is unclear. Mr. Dawson invokes this supposed jurisdictional uncertainty as a means of avoiding regulation of some of this Nation's most vital wetlands for ducks, geese and other migratory birds. Mr. Dawson asserts that Congress lacks authority under the commerce clause of the Constitution to regulate some of these waters—often called 'isolated' wetlands because they

have no direct surface connection to streams and rivers—because they supposedly have an insufficient impact on interstate commerce. This attempt to eliminate isolated wetlands from section 404 jurisdiction ignores the fact that in the last 50 years the Supreme Court has never invalidated a Federal statute on the ground that it exceeded Congress' power under the commerce clause.

In the first three oversight hearings Mr. Dawson repeatedly evaded the question of whether use of isolated wetlands by migratory birds establishes a sufficient connection to interstate commerce to allow Congress to regulate these waters under the commerce clause. Mr. Dawson insisted that it would be improper for him to provide corps field personnel with any guidance on whether migratory bird use—particularly use by ducks and geese—brought isolated wetlands within section 404's coverage. EPA, on the other hand, maintained that use or potential use of isolated wetlands by migratory birds creates a sufficient basis for jurisdiction under section 404.

Finally, after 6 months of effort by Senator MITCHELL and myself, Mr. Dawson at the fourth oversight hearing appeared to agree with EPA's and the Justice Department's position that migratory bird use or potential use establishes section 404 jurisdiction. In fact, I left that hearing thinking that Mr. Dawson had abandoned his position of allowing corps field personnel to decide on a case-by-case basis whether destruction of isolated wetlands has sufficient impact on interstate commerce to establish jurisdiction.

But then less than a month later, Mr. Dawson wrote in support of a corps decision refusing to assert jurisdiction over an isolated wetland which had been discussed in three of the four oversight hearings. That decision, rendered only 2 weeks before the fourth hearing in September, found that destruction of a 30-acre isolated wetland with documented waterfowl use would have no impact on interstate commerce.

According to Mr. Dawson, Congress cannot regulate this pond which was used over the course of a year by thousands of individual members of more than 50 migratory bird species, including at least a dozen waterfowl species subject to hunting, because the impact on interstate commerce is too trivial.

Mr. Dawson ignores the fact that the destruction of isolated wetlands nationwide has a substantial impact on interstate commerce. This destruction is largely responsible for record low levels of many duck species, which in turn has necessitated sharp cutbacks in waterfowl hunting seasons

this year, which in turn has a substantial effect on interstate commerce.

Mr. Dawson's support for that corps decision is flatly inconsistent with the positions taken by EPA and the Justice Department. And it flies in the face of more than 50 years of Supreme Court case law on the extent of Congress' authority under the commerce clause. Under Mr. Dawson's leadership, the corps is being encouraged to assume that they do not have jurisdiction over isolated wetlands unless proven otherwise. No other Federal agency operates this way. We cannot afford to have Mr. Dawson run the section 404 program this way. At stake is the protection of approximately 13 million acres of isolated wetlands which are essential to maintaining our ducks, geese, and other migratory birds. These waters often are just as important to the public for controlling flooding and recharging underground water supplies.

So, when protection of an isolated wetland is in question, Mr. Dawson takes the narrow and completely unsupported view that Congress cannot prevent the destruction of an isolated wetland unless it is proven that more than a trivial impact on interstate commerce would result. Yet when development of a wetland for a project that does not need to be in or near water is in question, Mr. Dawson supports a broad and overly forgiving interpretation of section 404's environmental regulations.

For instance, Mr. Dawson has presided over an emerging policy that disregards the so-called "water dependency test" in the corps' regulations and EPA's section 404(b)(1) guidelines. Section 404(b)(1) prohibits the corps from issuing permits for wetland fills except in compliance with regulations promulgated by EPA. The water dependency test is the key standard in EPA's 404(b)(1) guidelines which prohibits the unnecessary destruction or alteration of wetlands where practicable alternative sites are available or where the project need not be located in a wetland to meet its objectives; that is, is not water dependent. Construction of a marina is water dependent, whereas construction of a shopping mall is not.

Mr. Dawson argues that he approved making EPA's 404(b)(1) guidelines explicitly mandatory, and that under his tenure it is more difficult for permit applications to pass the 404(b)(1) analysis. However, it was Mr. Dawson who pressed EPA back in November 1982 to relegate their 404(b)(1) guidelines to an advisory status so that the corps would no longer be bound by EPA's requirements in making decisions on permit applications. He argued further at that time that EPA should abolish the water dependency test altogether. It was William Ruckelshaus who convinced the administration that Mr.

Dawson's recommended changes were ill-advised. Thus, EPA's guidelines remain mandatory in spite of Mr. Dawson's best efforts, not because of them.

Nevertheless, Mr. Dawson, undaunted, continues his attack on the water dependency test, testifying on May 21 that this fundamental precept of the Section 404 Program "for the most part, serves little purpose in the analysis of an application under section 404. It often confuses the issues rather than promotes an objective analysis."

Quite to the contrary, the immense value of wetlands and the stunning rate at which these resources are being destroyed certainly justify the presumption against development in wetlands. Further, private investors, aware of the presumption and difficulty it would cause in securing a section 404 permit for certain projects that are not water dependent, have sought alternative sites. Thus, the present EPA environmental guidelines have influenced expectations. Changes in the guidelines, such as those recommended by Mr. Dawson, would alter those expectations and could undo the long-term protection of wetlands.

Unsuccessful at getting EPA to remove the water dependency test from its own environmental regulations, Mr. Dawson instead has supervised the reinterpretation of those regulations by the Corps of Engineers in the context of a specific permit application to build a mall in 30 acres of wetlands near Attleboro, MA.

In this particular case the corps' New England Division engineer decided that a permit to construct the mall should be denied because it was not water dependent and a viable, alternative upland site was available only 3 miles away. But before a final decision was made, corps officials in Washington made the extremely unusual request to review the permit application. One month later the New England Division engineer was directed to "reconcile your documentation with the guidance" from Washington and issue the permit, principally because of the applicant's pledge to build a replacement wetland somewhere else. The decision to issue the permit by corps headquarters was based on the rationale that the applicant's offer of mitigation did away with the need to comply with the presumption in EPA's regulations, which assumes that practicable alternatives for nonwater dependent projects such as shopping malls are available unless clearly demonstrated otherwise. A study contracted by the New England Division engineer demonstrated that such an alternative did exist.

Instead the Attleboro Mall developers were allowed, in effect, to purchase an exemption from the requirements of EPA's environmental guidelines—a result remarkably consistent with Mr.

Dawson's earlier recommendation that such requirements be dropped from the guidelines. In fact, to ignore the water dependency test and grant a permit based on a pledge to build a replacement wetland would turn section 404 from a wetland protection statute into a wetland removal statute.

Now, Mr. Dawson argues that he has had no personal involvement in any substantive decision in the Attleboro case, but that's hardly the point. As the Acting Assistant Secretary of the Army for Civil Works, Mr. Dawson is the civilian primarily responsible for overseeing the Corps of Engineers' implementation of section 404. He has served in that capacity for 14 months and he is thus answerable for actions taken by the corps regardless of whether he is personally responsible for them. It is his duty as Acting Assistant Secretary to ensure that the corps faithfully executes section 404. I believe Mr. Dawson has failed in that duty by allowing a new precedent to be advanced that would permit wetlands to be destroyed by nonwater dependent projects—malls, condominiums, business office complexes—even though the wetland losses were avoidable.

The lingering dispute over the definition of fill material is another area where Mr. Dawson has failed as Acting Assistant Secretary to rectify situations where the corps is obviously failing to enforce the law.

In contrast to the Clean Water Act's express prohibition of unpermitted discharges of all fill material in waters of the United States, Mr. Dawson refuses to revise Army's definition of fill material which exempts discharges of fill that are accidental or that are "primarily to dispose of waste." Mr. Dawson contends that such fills should be regulated under section 402 of the Clean Water Act and the NPDES Program for effluent limitations. Nothing in the Clean Water Act indicates a congressional intent to exclude such discharges from section 404 regulation and, in fact, the Army definition is in violation of the plain language of section 404(a) and as such is invalid. Yet the only reason Mr. Dawson offered at the June 10 oversight hearing before the Subcommittee on Environmental Pollution for refusing to modify Army's limited definition of fill material was "we feel we have the expertise to deal with the fill question when that is the primary purpose." Mr. Dawson did concede that "it is not always easy to say what that primary purpose is and what may be an initial primary purpose may evolve into some other purpose later on."

Mr. Dawson's contention that solid waste fills are regulated under section 402 is belied by EPA's insistence that their "position has been consistently

that fill should be regulated under section 404, whatever the purpose of that fill." EPA maintains that Mr. Dawson's "primary purpose" test is unworkable administratively because the "primary purpose" in any given situation may be unidentifiable. In addition, the test makes no sense because adverse environmental impacts from a fill are unrelated to the discharger's intent and therefore the line drawn by Mr. Dawson is arbitrary. Let me give you two brief examples.

In Pennsylvania a paper company was discharging over 120 tons of fly and bottom ash daily into a wetland without a section 404 permit. When the State fish commission wrote the corps about the effects of this unpermitted discharge on aquatic life, the corps responded that the "discharge of material primarily for waste disposal does not constitute a discharge of fill material. Consequently, no violation of section 404 has occurred and the (corps) district is not taking any enforcement action."

In Idaho, a power company blasted an access road across the face of a cliff above the Snake River. The blasting caused rock material to slide into the river, destroying 23 acres of riverbank vegetation and abstracting more than half of the river channel. The corps in this case found that the company had not intended to fill the river; that is, it was "accidental," and therefore the discharge did not meet the corps' definition of fill material.

Mr. Dawson inherited this dispute over solid waste disposals in wetlands and other waters, but he has presided over Army's continued refusal to regulate these discharges for the past 4½ years and they remain largely unregulated to this day.

On February 10, 1984, as part of an agreement to settle a lawsuit brought by 16 conservation organizations, Mr. Dawson agreed to publish a final joint definition of fill material with EPA within 120 days. When that deadline was missed, Mr. Dawson signed a sworn statement in U.S. district court that he would promulgate a joint definition with EPA by May 15, 1985. When that deadline was missed, Mr. Dawson told Senator MITCHELL and myself on July 15, 1985, that a new schedule had been established that would provide a definition by January 1986. But when I and Senator MITCHELL met with Mr. Dawson on November 12, two-thirds of the way toward the new deadline, he was unable to report any substantive progress toward a new definition. I must say that I have little confidence that Mr. Dawson will agree to changes in the Army's definition of fill material by the end of this month. In the meantime, the burden falls to EPA to use its enforcement authority under section 309 of the Clean Water Act to prohibit completely accidental fills

and solid waste disposal discharges in wetlands and other waters. EPA is poorly equipped to regulate these discharges because, contrary to what Mr. Dawson tries to argue, Congress never intended that they assume this responsibility.

In yet another area of problems in the recent administration of the Section 404 Program, Mr. Dawson has argued that the memoranda of agreement [MOA] between Army and the Federal resource agencies, which are established under section 404(q), are "clearly the responsibility of the executive branch and should not be the subject of confirmation hearings."

Although the Army has primary day-to-day responsibility for the 404 Program, Interior, Commerce, and EPA also review 404 permit applications. Prior to 1982 disagreement between these agencies and Army over the resource impacts of a permit resulted in elevation of a permit under the 404(q) MOA to higher administrative levels within the Army for additional substantive review. However, in 1982 Army and Interior, Commerce and EPA signed a new MOA that gave the Assistant Army Secretary discretion over whether to conduct additional review, and greatly restricted the review agencies ability to protect fish and wildlife and water quality. After the signing of the 1982 agreements, the Army refused the majority of the requests by the Federal resource agencies to elevate disputes to higher level officials.

Former Assistant Interior Secretary G. Ray Arnett has been a vocal and harsh critic of the MOA which was in effect between Army and Interior from July 1982 to November of this year. For example, on November 7, 1984, Assistant Interior Secretary Arnett wrote Mr. Dawson after 2 years of having his Department's views ignored, "It is now abundantly clear that further correspondence on this issue is pointless and that Army's regulatory program is so flawed, it is no longer a usable tool to adequately protect wetlands." EPA, under William Ruckelshaus and Lee Thomas, was so dissatisfied with its MOA with Army that EPA terminated it, an option Interior did not have in their agreement. Mr. Dawson, on the other hand has been a staunch supporter of the 1982 MOA with Interior and EPA and has prevented revisions to provide adequate protection for the aquatic environment.

On May 21, Ray Arnett appeared before the Subcommittee on Environmental Pollution and reaffirmed his belief that problems with the 1982 MOA "prevented adequate protection of the environment." The two key problems identified by both Ray Arnett and Bill Ruckelshaus were that the 1982 MOA failed to allow elevation of permit decisions based on concerns

for impacts to resources and failed to insure that EPA and Interior would be able to obtain further review when their Assistant Administrator or Assistant Secretary made such a request.

Despite Mr. Dawson's belief that the MOA should not fall within Congress' purview, the subcommittee did intervene actively over the past 6 months to address the concerns of Interior and EPA. As a result, I can tell you that new MOA have been signed with Army. The agencies are in agreement. Unfortunately, the problems identified by Ray Arnett and Bill Ruckelshaus remain largely uncorrected. Mr. Dawson has successfully retained his authority to unilaterally determine whether to conduct further permit review. In my opinion, his refusal to relinquish this excessive authority continues to jeopardize the 404 Program's ability to provide adequate environmental protection.

Mr. Dawson's attempt to avoid regulation of isolated and other wetlands and accidental and solid waste discharges and to prevent further review of environmentally questionable permit decisions are some of the most egregious examples of why he should not be confirmed as Assistant Secretary. Regrettably, they are not the only examples of his lack of commitment to the goals of section 404.

For instance, the Subcommittee on Environmental Pollution also spent some time looking at problems with enforcement of section 404. Mr. Dawson claims that it is more difficult now than ever before to get a permit. That claim is based on his statistics showing an increase in rate of permit denials from 4 percent to 5 percent under his tenure. Quite apart from the fact that this is hardly a dramatic increase, it also is very unrevealing. The statistic says nothing about how many permit denials involved filling wetlands as opposed to other activities under section 404 and section 10 of the Rivers and Harbors Act, for which the corps also has responsibility for issuing permits.

In New England, for example, the corps denied 18 of the 421 permits it considered between March 1984 and March 1985. Of these 18 denials, only 8 involved wetlands and fully 3 of these were denials of so-called after-the-fact permits where the corps allowed the illegal fill material to remain in the wetlands. The other permit denials were for floats, anchor logs, revetments, and boat docks. I have to wonder, therefore, if the increase in the rate of permit denials is due more to an increase in the rates of denials for floats and after-the-fact permits where no restoration or corrective action is required than to a tougher policy toward wetland fills.

The policy toward enforcement during Mr. Dawson's tenure certainly

hasn't gotten tougher. In a letter to me on July 15, 1985, Mr. Dawson conceded that during the past 4½ years voluntary compliance with section 404's provisions has decreased; that the percent of section 404 violations in which litigation is pursued by the corps has decreased; and that the percent of section 404 violations resulting in after-the-fact permits has increased. Mr. Dawson also reported incorrectly that "the total number of violations has decreased substantially" since his reforms have been implemented. In fact, what his own statistics show is that the total number of enforcement actions taken by the corps has dropped drastically from 5,151 in 1981 to 2,281 in 1984. There is absolutely no reason to accept Mr. Dawson's apparent attempt to equate a decline in enforcement actions with a decline in violations.

Quite to the contrary, there are compelling reasons to believe that the statistics reveal that during Mr. Dawson's tenure the corps has repeatedly ignored illegal activities. For instance, the U.S. Fish and Wildlife Service looked at a sample of 40 wetland fills between 1980 and 1984 in northern New Jersey. Of the 40 fills, 23 resulted from illegal activities for which the Service was unable to get the corps to take enforcement action.

Mr. Dawson also claims that under his leadership there are much tighter controls on all nationwide permits, especially those in isolated waters and headwaters. It is true that under a settlement of a lawsuit brought by 16 conservation groups, Mr. Dawson agreed to require corps review of many wetland projects previously excluded. For projects affecting between 1 and 10 acres of isolated wetlands or wetlands located above the headwaters of rivers, the settlement stipulated that the prospective discharger had to notify the corps. The corps, in turn, is required to make available all of these so-called predischARGE notifications that are of interest to the State and Federal resource agencies. However, under Mr. Dawson's guidance the corps has made only minimal efforts to inform the public of this new requirement. Eight months after the predischARGE notification process went into effect, the corps had received only 68 such notices nationwide. The Army's own environmental assessment of this nationwide permit [NWP] estimates that "approximately 9,000-10,000 activities can be expected to be authorized by this NWP during a year."

And Mr. Dawson has refused to provide all the notifications received by the corps to the State and Federal resource agencies, arguing that the corps is required only to provide those notices of particular interest and that these agencies cannot possibly be particularly interested in all the notices

of wetland fills in their State or region. Consequently, while there are tighter controls on paper over small wetland fills, these controls have been rendered nearly meaningless by their lax and obstructive implementation under Mr. Dawson.

I could go on with even more examples of how implementation of section 404's environmental protections have been thwarted under Mr. Dawson. Suffice it to say that there is little doubt in my mind that his record as Deputy Assistant Secretary and Acting Assistant Secretary demonstrates fundamental opposition to the goals of the Clean Water Act's Section 404 Program. I do not question Mr. Dawson's character or integrity, but at a time when our wetland resources are seriously threatened, it is just plain wrong to confirm a nominee who is unwilling to uphold the law and who has instead worked actively to subvert it or passively preside over its subversion by his subordinates.

I hope that my colleagues will agree with the straightforward premise that the Section 404 Program, a cornerstone of our Federal wetland protection efforts, should not be entrusted to an individual who is unwilling to implement the program as Congress intended. If you agree with that premise, then I think you must join me, Chairman STAFFORD, Senator MITCHELL, and others in opposing Mr. Dawson's nomination as Assistant Secretary of the Army for Civil Works.

Mr. President, if my colleagues care about the future of our waterfowl, about the future of our fisheries, about the future of our shellfisheries, about our drinking water supplies, about our flood-prone areas, then I hope they would join with Senator MITCHELL, me, Chairman STAFFORD, and many others in opposing the nomination of Mr. Dawson. These vital natural resources of our country are dependent upon the continued existence of the Nation's wetlands—almost 60 percent of which have been destroyed in the lower 48 States. And the continued existence of the remaining 40 percent depends largely on an effective administration of section 404 of the Clean Water Act.

This permitting program, which controls the filling of our waters is without question the most important regulatory mechanism the Federal Government has to curb the unnecessary destruction of the Nation's rapidly disappearing wetlands.

Mr. Dawson in one capacity or another has been largely responsible for the administration of section 404 for the past 4½ years. This is not any trial run in which we do not know anything about the gentleman. We know. We have seen what he has done. In that time he has demonstrated that he is unwilling to uphold the law, and instead has worked actively to subvert it

or has passively presided over its subversion by his subordinates.

Over the past 6 months the Environmental Pollution Subcommittee, which I chair and Senator MITCHELL is the ranking minority member, has pressed hard to get Mr. Dawson to implement section 404 as Congress intended but our efforts have been to little avail.

In clear contradiction of the legislative history of this act, the Clean Water Act of 1977, Mr. Dawson still goes out of his way to claim "Congress did not design section 404 to be a wetlands protection mechanism, and it does not function well in that capacity." That is completely contrary to the legislative history and the statements of those who were most involved in that act. He uses this demonstrably false view of section 404 to justify a wide range of policies that narrow the types of waters and activities which are regulated.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CHAFEE. I yield myself 5 more minutes.

Mr. President, his efforts have been to frustrate the objectives of the act. In doing so, he has provoked unprecedented levels of confrontation with State and Federal agencies that share a role in section 404, as has been cited by the distinguished Senator from Wisconsin, Senator PROXMIRE. Mr. Dawson's acrimonious debate with the Environmental Protection Agency, with the Fish and Wildlife Service, and officials of the Interior Department belies his statement that he is doing nothing more than dutifully carrying out this administration policies.

He continues to cast uncertainty over the types of waters and activities that are covered by 404 and continues to allow each of his 37 district engineers to reach independent judgments on the extent of the congressionally established jurisdiction of the program. He invokes this imposed jurisdictional uncertainty as a means of avoiding regulation of activities in some of this Nation's most vital wetlands for ducks, for geese, and for other migratory birds. These wetlands are often called isolated because they have no direct surface water connection to streams and rivers.

Under his leadership the corps is being encouraged to assume that they do not have jurisdiction over isolated wetlands unless proven otherwise. No other Federal agency operates in this fashion. We cannot afford to have Mr. Dawson run the section 404 wetlands program the way it has been done.

He continues his attack on the so-called water dependency test. What is a water dependency test? It is a requirement that development in wetlands be dependent upon water, such as a marina. A shopping center is not a

water-dependent development. A shopping center does not have to go into a wetland, and does not have to go into a marshland adjacent to the estuaries of the United States. This is a key test in the environmental standards of section 404. It prohibits the unnecessary destruction and alteration of wetlands where practical alternative sites are available.

To ignore the water dependency test as Mr. Dawson did when he allowed the corps to issue a permit to build a shopping mall in a wetland in Attleboro, MA is to turn the Clean Water Act from a wetland protection statute into a wetland removal statute.

I submit here for the RECORD the recommendations of the Corps of Engineers, the commander of the New England Division where this project is located, in which he said, "I recommend that the permit be denied for three reasons." And what happens under Mr. Dawson? He has the Director of Civil Works, reach down to this little 50-acre site and say, "it is my decision that the proposed project complies with the 404(b)(1) guidelines, and is not contrary to the public interest." The Director of Civil Works says to the commander, and you know he will do what he is told to do: "You are directed to reconcile your documentation with the guidance contained within the enclosure." You said "no," but shift it around so it comes out "yes," so you comply with what I am telling you to do—I, who work for Mr. Dawson.

Mr. President, he still argues that the corps should not regulate wetland if it is accidental or if it is done primarily to dispose of waste—in other words, if your principal object in backing up to a wetland is to empty your truck, that does not have anything to do with fill. Your intention must be to fill the wetland. What kind of a test is that, Mr. President?

It took 6 months of pressing by the subcommittee that I chaired to get Mr. Dawson to agree to revise the memoranda of agreements between the Army on the one hand, and the EPA on the other and the Interior Department on the other hand. These agreements only ensure that the views of EPA and Fish and Wildlife are considered. They are not controlling. The views are only to be considered.

During his tenure in the Assistant Secretary's office, the number of enforcement actions brought by the corps against section 404 violators has been cut in half. Voluntary compliance with section 404's requirements and litigation by the corps against violators has dropped.

I could go on with other examples. Suffice it to say there is little doubt in my mind that his record as Deputy Assistant Secretary and Acting Assistant Secretary demonstrates fundamental

opposition to the goals of the Clean Water Act's Section 404 Program.

I do not question his integrity or his character. But at a time when our wetland resources are seriously threatened, Mr. President, it is just plain wrong to confirm a nominee who is unwilling to implement the law as Congress intended.

Mr. President, I ask unanimous consent that the document from the deputy commander to the commander of the corps' New England division from which I quoted, together with the correspondence from director of civil works, dated May 31, 1985, from corps headquarters, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From New England Division]

Subject: Elevation of the Permit Decision for an Application submitted by the Newport Galleria Group for a fill for a proposed mall in S. Attleboro, Mass.

To: Commander.

From: Deputy Commander.

Date: 2 May 1985, Lawless: 338.

1. I have inclosed my recommended permit decision on this case for your response to Major General Wall, Director of Civil Works, per his 24 April 1985 request.

2. I recommend that the permit be denied for three reasons. I believe that the project does not comply with the 404(b)(1) guidelines because there is a practicable alternative for the proposed discharge that has less adverse impact on the aquatic ecosystem. Further, the alternative to the entire proposal (on and off-site) has less adverse impact because it does not depend on the success of creating wetlands. Third, for these reasons, I also do not think it is in the public interest to issue the permit.

3. If General Wall should decide to issue the permit, I strongly recommend that you urge him to consider the following:

a. Require the applicants to find a more suitable location for off-site mitigation. The proposed North Attleboro site is strongly opposed by that town and doubts have been raised about its hydrologic capability to support a viable wetland.

b. Subject the off-site mitigation proposal to a public interest review since it represents such a major (50 acres) construction element of the project. Limited meetings by my staff in this regard have already raised serious questions about the North Attleboro mitigation site.

c. Assuming a workable mitigation plan is developed and reasonably enforceable special permit conditions can be written, accept the applicant's offer of a performance bond to ensure effective completion of this work. The conditions of this performance bond should be carefully developed to ensure release of funds if the Corps determines such funds are needed.

4. Because I was considering denying the permit these additional tasks had not been done and our record is, therefore, incomplete.

EDWARD D. HAMMOND,
LTC, Corps of Engineers,
Deputy Commander.

[From Corps Headquarters]

U.S. ARMY CORPS OF ENGINEERS,
Washington, DC, May 31, 1985.

Subject: Permit Decision for an Application for a Fill for a Proposed Shopping Mall in South Attleboro, Massachusetts.

COMMANDER,

New England Division.

1. Reference your letter of 2 May 1985, SAB.

2. I have reviewed your working draft documentation and have provided my findings in the enclosure (Views of the Chief of Engineers).

3. I had elevated this case for my review in order to resolve the policy issue of practicable alternatives as applied to non-water dependent activities under the Section 404(b)(1) guidelines and the use of mitigation to satisfy 40 CFR 230.10(a). I have determined, that in a proper case, mitigation measures can be used to reduce adverse impacts of a proposed activity to a point which would allow 40 CFR 230.10(a) to be satisfied.

4. Based on my findings, it is my decision that the proposed project complies with the 404(b)(1) guidelines and is not contrary to the public interest.

5. You are directed to reconcile your documentation with the guidance contained within the enclosure. You should then proceed to develop appropriate special conditions to insure the success of the mitigation and to prepare your notice of intent to issue pursuant to the 404(q) MOAs.

For the Commander:

JOHN F. WALL,
Major General, USA,
Director of Civil Works.

Mr. LEAHY addressed the Chair.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The time of the Senator from Rhode Island has expired.

Mr. CHAFEE. Mr. President, how much time is left on this side?

The PRESIDING OFFICER. There are 9 minutes remaining on that side.

Mr. WARNER. Mr. President, I understand the vote is at 11 o'clock and that the proponents have 7 minutes. I was told that. If this side has 9 minutes, we are well on the brink.

Mr. CHAFEE. Mr. President, I propose to yield 3 minutes to the Senator from Vermont, and then reserve the reminder of our time.

I yield 3 minutes to the Senator from Vermont.

Mr. LEAHY. I thank the Senator.

In 1981 this body confirmed the nominations of James G. Watt as Secretary of the Interior and Anne Gorsuch Burford as Administrator of the Environmental Protection Agency. Both of these appointees to preeminent positions of stewardship for our Nation's natural resources have since left their posts amidst a furor of charges. In some ways it was a very odd process. Just a year or so after this body had confirmed Mr. Watt and Ms. Gorsuch, this hall rang with denunciations of their policies, often from the same people who had supported their confirmation. In vote after vote their programs were re-

versed, and finally both resigned in the face of imminent congressional action.

Many then explained that they had no idea how irresponsible Mr. Watt or Ms. Gorsuch would be when they were confirmed.

Today, I am taking the floor to warn my colleagues that they will have no excuses when they are called to task for their vote on the nomination of Robert K. Dawson to be Assistant Secretary of the Army in charge of the Corps of Engineers.

I think the distinguished Senator from Rhode Island and the distinguished Senator from Maine have done a great service to this body in bringing out the points which they have raised. Like the distinguished Senator from Rhode Island [Mr. CHAFEE] I do not question the integrity or the competency of Mr. Dawson. I question his policies.

Mr. President, a vote for this nominee is a vote for the policies of James Watt and Anne Gorsuch.

This time we must make a stand. If we approve the Dawson nomination, he will inevitably lead us into the same disarray on the crucial issues of water policy and wetlands management brought by Watt and Gorsuch in so many areas.

Our Nation's wetlands play a critical role in sustaining and improving water quality, in minimizing flooding and storm damage, and in recharging our ground water resources. All across the country they are invaluable to the survival of wildlife. They are a resource of environmental and economic importance to us all.

In spite of their value, wetlands have been disappearing at an alarming rate. It is estimated that 54 percent of our wetlands have been lost nationwide to date. Some 450,000 acres are vanishing annually. Louisiana coastal marshes are going at a rate of 25,000 acres a year; Mississippi River forested wetlands, at 100,000 acres a year. The loss of wetlands is costing \$208 million a year in fisheries.

In every State wetlands play a vital role. Vermont, for instance, is not particularly well known as a wetlands State. They are, however, an important resource for us. Recreational fishing in Vermont is dependent on wetlands. In 1980 over \$15 million was spent on sport fishing. As waterfowl habitat, Vermont wetlands up and down Lake Champlain, provide a link for migrants between Canada and the Southern United States. Our Missisquoi National Wildlife Refuge supports the largest blue heron colony in the Northeastern United States.

A 1979 study of 100 randomly-selected sample Vermont wetlands found that 73 percent has been altered by development activities. Thus, this nomination is critical to my State as well as to the Nation.

Congress in 1977 recognized the importance of protecting wetlands. That was the year that section 404 became a part of the Clean Water Act. The Section 404 Program has only been a start in wetlands protection. Much could be done to improve its effectiveness. But it is still a critical tool in assuring wise management of our Nation's wetlands.

Unfortunately, there has been a drastic and continuous decline in the program's effectiveness since 1981. The Army Corps of Engineers has been failing to uphold either the letter or the spirit of the law. Throughout this period the Corps of Engineers has been under the supervision of Robert K. Dawson, first as Deputy Assistant Secretary from May 1981, and then as Acting Assistant Secretary of the Army from May 1984 to the present. Mr. Dawson, therefore, stands before us today on a record which is crystal clear.

For example, in 1982 Mr. Dawson was involved in regulatory changes for the Section 404 Program that were so egregious that they drew the formal opposition of Mr. Watt's Department of the Interior and Ms. Gorsuch's Environmental Protection Agency. However, both the concerns of the other Federal agencies and of the Senate subcommittee of jurisdiction were ignored by Army.

In November of that same year, Mr. Dawson requested that the EPA section 404 environmental regulations be relegated to an advisory status so that they would no longer be binding on the corps' permitting process. In conjunction with this procedural attack on section 404, Mr. Dawson went on to make a substantive attack. He proposed that a key element of the EPA regulations—the presumption that upland alternatives are available for non-water dependent activities—be dropped. It is this test which makes it possible to prohibit the unnecessary destruction or alteration of wetlands where alternative sites are practicable.

Unfortunately, Mr. Dawson did not stop there. In May 1983, new rules for dredge and fill activities in wetlands, which were approved by Mr. Dawson, were published. Understanding the sweeping implications of these changes is critical to understanding Mr. Dawson's goals for the Section 404 Program; let me review them briefly.

Under the guise of seeking greater efficiency, the Dawson proposal is, in fact, a major weakening and dismantling of the Section 404 Program. These proposed rules were opposed by the Environmental Protection Agency, 39 agencies in 33 States, numerous national conservation organizations, professional organizations in the fields of wildlife and fisheries, and many State and local organizations.

First, the proposed rules would redefine terms within the definition of wetlands so that approximately two-

thirds of the wetlands in the lower 48 States—more than 60 million acres—currently protected by section 404—such as bottom land hardwoods, shrub bogs and peat bogs—would no longer be protected. In addition, millions of acres of tundra would no longer be considered wetlands. This reduced protection of the wetlands. This reduced protection of the wetlands resource clearly violates the objective of the Clean Water Act by disregarding the critical role many of these excluded wetlands play in protecting "the physical, chemical, and biological integrity of the nation's waters..."

The Environmental Protection Agency expressed its opposition to the revised definition this way:

Because the definitions contained in this part determine the scope of jurisdiction of the Section 404 program and were proposed without our concurrence, these changes are inconsistent with the legal opinion of the Attorney General that EPA has responsibility for determining the scope of jurisdiction for all programs under the Clean Water Act.

Second, the rulemaking would strip the States of their ultimate authority to prevent the issuance of general permits that adversely affect water quality within that State. The Clean Water Act protects that authority. Individual or general permits can only be issued by the corps after the State certifies that the permits comply with State water quality requirements or waives the right to certify. Through a series of regulatory gymnastics the proposed rule unlawfully undermines the State's water quality certification rights.

Of paramount concern is the proposal's illegal authorization of nationwide general permits without State certification or waiver. The responsibility of individual permit review would be unlawfully shifted from the corps to the States—a tactical maneuver by the corps which would effectively coerce the States into certifying nationwide permits.

Third, the rule change would destroy permit review criteria. For example, it would presume, merely because a permit application is filed, that there is an economic need for a project. Current policy requires the permit applicant—also the direct beneficiary of permit issuance—to demonstrate that a proposed discharge is not environmentally damaging and is in the public interest. The proposed policy would shift the burden of proof from the applicant to the corps and other Government agencies and concerned citizens. The corps would thus shoulder responsibility for proving that a proposed project would be economically unsound or would have adverse environmental impacts as a basis for permit denial. The proposed rule introduces a bias toward permit approval. It presumes all permit proposals to be both environmentally accept-

able and in the best interest of the public unless proven otherwise.

The Environmental Protection Agency commented this way:

This burden of proof issue is of serious concern to EPA. A premise of the Clean Water Act is that discharges which may be "reasonable" from a private point of view may be "unreasonable" from a public water quality perspective and should therefore be regulated. The statute was written to protect important public resources from the effects of incremental decisions being made by individuals.

Fourth. As part of these proposed regulations, Dawson has proposed two so-called general permits.

These general permits would clearly violate the intent of the Clean Water Act.

The Clean Water Act restricts the use of nationwide general permits to categories of activities that are similar in nature and cause only "minimal individual or cumulative adverse environmental effects."

Two new permits in the proposed rule fail to meet the nationwide permit criteria. Exempted from individual permit requirements are all dredge or fill discharges by Federal projects, or projects receiving Federal permits or funding. These would include highways, irrigation projects, hydroelectric dams, housing developments, and sewage treatment plants among other projects. Also exempted would be public or private facilities adjacent to corps' civil works projects.

The Environmental Protection Agency responded negatively to this proposal as well:

The two new permits . . . illustrate a regulatory approach of concern to EPA that recurs throughout these proposed rules: an apparent willingness to forego environmental review responsibilities under the Clean Water Act for reasons of administrative expediency . . .

Fifth. The proposal also encourages the shortening of the public comment period on permit applications from 30 to 15 days and scraps the requirement that corps' public notices of those applications alert the public to its right to request a public hearing.

Sixth. The proposed rule would delete from section 404 regulatory policy explicit instruction to the corps to give "great weight" to the views of the Fish and Wildlife Service, the National Marine Fisheries Service, and to the pertinent State fish and wildlife agencies in permitting decisions. Deletion of the "great weight" directive downplays the importance that the corps is congressionally mandated by the Fish and Wildlife Conservation Act to give to both consideration of fish and wildlife values and to the expert views of Federal and State officials.

Taken together this package of regulatory changes will effectively gut the section 404 program.

In June 1985, the debate on Mr. Dawson's jurisdictional deregulation efforts came to a head over the issue of the corps' jurisdiction over wetlands.

Under section 404, the jurisdiction over such waters extends to the furthest extent of the Commerce Clause of the Constitution, which is the basis for almost all Federal regulatory statutes. The Supreme Court has reviewed numerous Federal statutes to determine if they exceed Congress' power under the Commerce Clause and in the past 50 years has never invalidated a statute on such grounds. Moreover, every court but one has concluded that Congress intended in the Clean Water Act to assert Federal jurisdiction over the Nation's waters to the full extent of its constitutional powers. The one exception is now before the Supreme Court, where the Justice Department of this administration argues that any contention that "it is 'not clear' that Congress wanted the corps to exercise the broadest possible jurisdiction over the Nation's wetlands is simply untenable . . ."

Yet, 10 years after the landmark court decision in *NRDC v. Callaway* and 8 years after Congress expressly stated that section 404 applies to wetlands without limitation, Mr. Dawson maintains that the limit of the Army's jurisdiction over wetlands is unclear.

He has even refused requests by the Environment and Public Works Committee to provide guidance to field personnel on how to determine interstate commerce jurisdiction over isolated wetlands. This leaves 37 corps districts to decide what the U.S. Constitution means.

The section 404 Program is the Nation's principal tool for protection of wetlands. For that reason, Mr. Dawson's nomination needs to be a matter of great concern to us here today. We do not have to extrapolate from what the nominee suggests he will do as Assistant Secretary of the Army, nor from his past record in other capacities. His on-the-job record is extensive and clear. He follows in the footsteps of Mr. Watt and Ms. Gorsuch.

I have spoken today to the aspects of the Dawson record on the section 404 Program which I find most troubling. The documentation which has been amassed as a result of the extensive oversight hearings on Mr. Dawson's implementation of the program by the Environment and Public Works Committee is telling. So is the widespread opposition to Mr. Dawson's confirmation from conservation organizations and concerned citizens all across the country. I, like my colleagues, do not oppose a Presidential nomination lightly. But in this case, I feel I have no choice because our Nation's wetlands are an irreplaceable national resource.

Mr. CHAFEE. Mr. President, I thank the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I rise in support of the nomination of Robert Dawson, a resident of Alexandria, VA, who has been nominated by the President for the post of Assistant Secretary of the Army for Civil Works.

I have worked with Bob on many occasions, both in his present job as Acting Assistant Secretary and prior to that as Principal Deputy Assistant Secretary.

I have always found Bob to be very responsive and in touch with the President's programs and the budgetary realities which face the water resources development program.

Even in the face of huge Federal deficits, Bob Dawson has kept the Corps of Engineers water resources development program moving along by looking for new and innovative ways to come up with the money for water projects.

I do not always agree with Bob's proposals in the cost sharing and user fee arena, but, I must say that he is making every effort to provide solutions to very difficult problems.

Earlier this year, for the first time in history, an administration submitted an omnibus water resources development bill containing some 62 projects for authorization.

Bob Dawson has been instrumental in getting this bill to the Hill and with his help, omnibus water resources legislation is moving closer to enactment.

Because of Bob's vast experience here on the Hill, including 3 years with Congressman Jack Edwards of Alabama, and nearly 7 years on the staff of the House Public Works and Transportation Committee, he understands the way the process works up here on the Hill.

Coupling that with his 4-plus years in the Reagan administration, he is uniquely qualified to perform the difficult job of Assistant Secretary of the Army for Civil Works.

On September 12, the Senate Armed Services Committee held a thorough hearing on all the relevant facts regarding Bob Dawson's nomination with the participation of the Senate Environment and Public Works Committee which has jurisdiction over some programs which the Assistant Secretary of the Army for Civil Works administers.

The nomination was not reported until September 30 to allow time for the Public Works Committee to hold a fourth oversight hearing on the section 404 program.

I supported this delay so that all the relevant facts about Bob Dawson's nomination could be aired.

The testimony supported my previous opinion of Bob Dawson which was

that he is well-qualified for this difficult position and that he will do an excellent job.

The President has exercised extremely good judgment in nominating Bob Dawson, and I urge my colleagues to vote for his confirmation.

Mr. President, I would like to propound a question to my distinguished colleague from Rhode Island and perhaps my distinguished colleague from Maine when he reenters the Chamber.

As I look at this debate, it does not involve this man's integrity, character, or any other aspect of him as an individual. Is that correct?

Mr. CHAFEE. That is correct.

Mr. WARNER. It seems to me that the issue is, first, whether he has implemented the policy of this administration. We are advised by Mr. Miller, by letter of November 23, that he is following the policy of this administration.

Mr. CHAFEE. Mr. President, I do not agree with that. I do not agree that that is the policy of the administration.

Mr. WARNER. The question is, is the nominee implementing the policy of the administration?

Mr. CHAFEE. Not in my judgment. I cannot believe it is the policy of this administration to overrule the law of the land as set forth in the Clean Water Act or to disobey the rulings of the court as set forth in case after case. My answer is no to the Senator's question.

Mr. WARNER. Mr. President, the letter to which I have referred is printed in the RECORD of Monday, December 2, 1985.

The PRESIDING OFFICER (Mr. WARNER). The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield 2 minutes to the distinguished Senator from Alabama.

Mr. DENTON. I thank the Chair and I thank the President pro tempore.

Mr. President, I am delighted to have the opportunity today to support my fellow Alabamian and friend, Robert K. Dawson. I am delighted that this fine man has been nominated for the position of Assistant Secretary of the Army for Civil Works. He is a man of principle and of accomplishments, well qualified for the position.

Bob grew up on a farm in Scottsboro, AL. He attended Tulane University on a football scholarship, and while there was active in student and extracurricular life. After graduation from Tulane, he attended the Cumberland School of Law at Samford University in Alabama. He was an outstanding student, he was on the editorial board of the law review, was a member of the moot court team. He was elected as president of the law school's student body.

Bob's professional career has been a perfect preparation for the position to which the President has nominated him. As a staff member for former Congressman Jack Edwards, Bob handled many constituent and legislative problems, including those involving the Corps of Engineers, for the First District of Alabama. That is an area rich in water resources and in which the activities of the corps are particularly important.

His experience and natural leadership abilities allowed Bob to advance quickly to the position of administrator of the House Committee on Public Works and Transportation. That committee's responsibility and jurisdiction gave him indepth exposure to the laws and regulations affecting water resources.

In 1981, Bob's talent and accomplishments were recognized by his appointment as principal Deputy Assistant Secretary of the Army for his civil works. In that position, his efforts were focused on the activities and programs of the civil works mission of the Corps of Engineers. For the past 14 months, Bob has been Acting Assistant Secretary, fulfilling the responsibilities of the position even though he did not have the formal title and all the authority that comes with it.

I am particularly impressed by the fact that Bob's rapid advancement and sterling professional performance were coupled with family, church, and civic life. He is married to the former Susan Lee of Louisiana. They have two fine children, Amy, age 13, and Steve, age 11, who are in school today.

Bob is active in the Trinity United Methodist Church in Alexandria, VA, where he is a member of the administrative board. He devotes his spare time to family activities, including participation in a singing group that gives free performances in local hospitals, jails, and retirement and nursing homes.

Mr. President, I would be remiss if I did not say that there has been some controversy attendant upon Bob's nomination. I must point out, however, that those concerns have nothing to do with his qualifications, his competence, or his integrity. Indeed, they have nothing to do with him personally. They have to do with a policy issue, the regulatory reform of the Corps of Engineers Permit Program.

I recognize that there may well be controversy about the policy governing that program, but that is clearly a policy issue, not an issue of the qualifications of the nominee. Although the issue may warrant debate, I hope that such debate can take place in more appropriate forum for considering and making policy, not in connection with the consideration of the qualifications of an outstanding individual to serve our President and our country in an important position.

Mr. President, I thank you and my colleagues for the opportunity to speak in support of an outstanding Alabamian and an outstanding nominee. I am confident that the Senate will recognize his qualifications and his fine personal characteristics, and that we will approve his nomination.

Mr. President, I have generally reiterated the remarks of the distinguished Senator from Virginia. Mr. Dawson is from Alabama and he does have fine credentials which I can represent to you. Among those is he was president of the law school student body at Samford University.

Mr. President, I believe he probably has carried out the administration's policies. I think we should also note that in dealing with this individual, and with great deference and respect for my colleagues from Vermont and Maine, and certainly my chairman from Rhode Island, we have different State interpretations as to what is good and bad for the common welfare. We have the industrial development versus water development, waterfowl and wetlands, dredging disposal versus fishing—all of that sort of thing which we have been struggling with.

I wish to refer to an article concerning Mr. Dawson which appeared in the 4 December 1985 Wall Street Journal. I will not say that the Wall Street Journal represents a balanced point of view, but they have a very strong endorsement of Mr. Dawson, pointing out that under the Carter administration some really silly bureaucratic regulations were set into effect which were changed by the Reagan administration. Mr. Dawson has followed those without great detriment to the environment.

In fact, Mr. President, a recent Environmental Protection Agency report entitled "The National Water Quality Inventory"—quoting the Wall Street Journal—states that "significant progress has been made in the cleanup of the Nation's waters." There are a number of examples in the article to which I have referred. Some are silly classifications of wetlands, such as mountain meadows coming under wetlands and thus under regulatory review.

I have assurances from Mr. Dawson that he will care, as all of us do in Alabama, about the wetlands, about the concerns and those questions raised this morning, with which I empathize.

Mr. President, I ask unanimous consent that the article to which I refer be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE WETLANDS BOG

Environmentalist zealots and some Democratic Senators have mounted a vehement campaign to block Senate confirmation

today of Robert Dawson as head of the Army Corps of Engineers. The critics are not challenging Mr. Dawson's credentials. Their attack is really against the Reagan administration's efforts to ease needlessly stringent and intrusive environmental regulations.

The charges against Mr. Dawson mainly involve the administration's "wetlands" policies. Wetlands legislation began as an effort to protect marine wildlife in coastal marshes and the like. But when the law came out of the legislative mill, it was truly amazing how much U.S. territory could be classified as "wetlands." Even mountain meadows came under regulatory purview. The Corps of Engineers oversees issuance of "dredging and filling" permits for such areas.

The Carter administration's Naderites used this statute to stymie private development and even improvements by local governments. In one remarkable case, homeowners in mountainous Gunnison County, Colo., did some emergency digging to divert spring floods. Federal bureaucrats thought it unreasonable that the homeowners had not let their homes be swept away so as to comply with the law requiring them to first obtain a "wetlands" permit.

President Reagan's Task Force on Regulatory Relief cited the broad scope of wetlands regulation as one of the worst examples of foolish federal red tape. As deputy assistant secretary of the army and later as acting assistant secretary of the army for civil works, Mr. Dawson has worked to eliminate such bureaucratic silliness. By all sensible accounts, he has done a good job. The "environment" has not suffered noticeably. A recent Environmental Protection Agency report, titled the "National Water Quality Inventory," says "significant progress has been made in the cleanup of the nation's waters."

The "Dump Dawson" movement is a reflection of the broader agenda of some political types who have chosen to carry environmentalism as a banner. No friends of private development, they would like to see more, not less, governmental red tape. They are entitled to espouse that view, but usually they prefer to be less forthright, since few voters agree with that part of their theology.

The attack on Mr. Dawson is neither fair nor honest. We hope the Senate will confirm him and demonstrate that the "environmentalist" banner is not always a magic wand for getting what you want.

Mr. TRIBLE. Mr. President, I rise in support of the nomination of Robert K. Dawson to be Assistant Secretary of the Army for Civil Works. As Deputy and Acting Assistant Secretary of the Army, Bob Dawson has provided dedicated and responsible management of an increasingly complex organization.

Mr. Dawson and I have worked together in forming a response to the flood problems in Virginia. I have found him to be knowledgeable, caring, and very responsive.

Bob Dawson has an excellent record of public service at the Department of the Army and as a staff member in the U.S. Congress. He has demonstrated leadership and a commitment to effective management of the Army's Civil Works Program and to the philosophy and policies of the President.

This is where the controversy regarding the nomination of Bob Dawson arises. It would be unjust to deny a capable public servant like Bob Dawson an opportunity to serve this Nation and this President because Senators have a philosophical disagreement with the goals of this administration. I endorse Bob Dawson because I believe that he has the leadership and administrative abilities, and the dedication, to serve our Nation well.

Mr. Dawson has shown that he has the creativity and long-range vision needed to make complicated programs run more efficiently and effectively. His efforts are improving the conservation of our valuable natural resources.

Moreover, Mr. Dawson has implemented measures intended to streamline and simplify overly complicated administrative programs, and to introduce reasonableness and predictability to the Army's regulatory process. He has successfully lifted unnecessary regulatory burdens without damaging our valuable natural resources. He has allowed responsible development to move forward while simultaneously finding ways to improve our Nation's environment.

Bob Dawson has the requisite experience and background to oversee all aspects of the Department of Civil Works. Just one example of the many positive reforms implemented by Bob Dawson is a cost-sharing and user charge program which will help defray the cost of projects which benefit certain segments of our society. These reforms have a positive impact on environmental regulation, and restrain Federal spending. We should develop ways to encourage private sector involvement in addressing environmental problems. Bob Dawson is doing just that.

Despite the criticisms I've heard about Mr. Dawson's administration of the 404 program, the facts are that permits are more difficult to obtain as a result of the Corps' policy of requiring adequate environmental mitigation and permit denials have actually increased during Bob Dawson's tenure.

I believe that Mr. Dawson's efforts to require private developers to compensate for environmental impacts through mitigation are precisely the creative approaches to conserving our resources we must encourage. These policies set positive precedents. They result in an increase in the quality and quantity of our Nation's wetlands while simultaneously fostering job creation and economic growth. Moreover, it's not the Government funding these wetland improvements—it's the private sector.

One instance where the Corps has furthered this sensible mitigation policy is a carefully conditioned permit to build a shopping mall on a

low-quality wetland in Attleboro, MA. In the course of criticizing Bob Dawson's work to reform 404, some have criticized this project as well. I believe that the criticism of this particular project is unfair and shortsighted when one considers the positive precedent that is being created by the high standards of performance imposed upon the developer by the conditions of the permit in question. The Attleboro case is a prime example of how economic benefits and environmental improvements can occur simultaneously.

This summer, the Corps of Engineers granted the Attleboro developer a conditional permit to fill 26 acres of low-quality wetlands for development. Among the permit conditions is a requirement that 26 acres of poor wetlands at the site be enhanced through replantings, hydrological improvements and other remedial measures. In addition, the developers are required to create a new, high quality wetland of approximately 40 acres at the nearby site of an abandoned gravel pit. As a result of this project, not only will 3,000 jobs and economic growth be created, but 65 acres of very high quality, diversified, functional wetlands will be created where 49 acres of dysfunctional, rubbish-ridden lowlands now exist. This is the type of positive environmental precedent that I support, and which we all should encourage.

These are the kinds of positive approaches that Bob Dawson and the Corps are taking to sensibly protect and improve our wetland resources.

Bob Dawson has shown creative leadership at the Department of the Army. His dedication and integrity are unquestionable and I urge his confirmation.

Mr. COCHRAN. Mr. President, I rise in support of the confirmation of Mr. Robert Dawson as Assistant Secretary of the Army for Civil Works.

Bob Dawson is uniquely qualified for this position. He has been Acting Assistant Secretary of the Army for Civil Works since May of last year, and principal Deputy Assistant Secretary since May of 1981. Before that, he spent nearly 7 years with the House Committee on Public Works and Transportation, which has oversight responsibilities for the Army Corps of Engineers. He also worked as a legislative assistant to Representative JACK EDWARDS of Alabama, with primary responsibilities in the area of water resources.

In addition to the practical experience gained throughout his career, Bob possesses two key attributes—intelligence and integrity. His ability to understand the various parts of a complex water project and to reach a decision which takes into account the interests of all concerned parties has

earned him the respect of not only the members of the Army Corps of Engineers, but also the civilian organizations who sponsor these water projects. He has become known for being impartial in the decisionmaking process, keeping the needs of the Nation foremost in his mind.

The State of Mississippi is greatly dependent on both flood control and port projects. With the Gulf of Mexico on the south, the Mississippi River on the west, and the Tombigbee River to the east, waterborne transportation of agricultural products is critical. In addition, the prime agricultural land is subject to flooding without existing flood control projects. As a result, the Assistant Secretary of the Army for Civil Works is a key Federal official to the State. Bob Dawson's nomination is strongly supported by those citizens of Mississippi who deal with these water projects on a day-to-day basis.

It is apparent from the debate on this nomination that the real issue is not the individual concerned, but rather the environmental policies of this administration. Both the Director of the Office of Management and Budget and the Secretary of Defense have indicated that Bob Dawson is carrying out the overall objectives of his position, and each strongly supports his confirmation. Recent memorandums of agreement reflect real progress in the environmental area and bode well for the future. It has not been the habit of this body to "shoot the messenger" yet a failure to confirm Bob Dawson today would do just that.

Having known Bob for several years, I am proud to support his nomination as Assistant Secretary of the Army for Civil Works, and I urge my colleagues to confirm this nomination.

Mr. KERRY. Mr. President, I join with many of my colleagues today in expressing concern about the nomination of Robert Dawson to be Assistant Secretary of the Army for Civil Works. Mr. Dawson's record on implementation of the Nation's wetlands protection program compels me to join with these colleagues in opposing his confirmation.

In the nearly 5 years that Mr. Dawson has lead the Army Corps of Engineers permit program under section 404 of the Clean Water Act, he has made it abundantly clear that he does not view wetlands protection as an intent of that program. Mr. Dawson's reluctance to recognize congressional intent in the development of section 404 has manifested itself in several ways; in addition to avoiding enforcement of the 1977 Clean Water Act, he has repeatedly refused to cooperate with fellow agencies—in particular, the Department of Interior and the EPA—in their efforts to fulfill their responsibilities under the 404 Program. In addition, his proposals for

regulatory change have drawn widespread opposition from State agencies across the country which have concerns regarding their impact on State programs and jurisdiction. Allowing Mr. Dawson to assume a position in which he would have expanded responsibilities for programs like this one and would have increased opportunities to decimate their usefulness, would be, I believe, a grave mistake.

Our Nation's wetlands, an important and significant natural resource, are being lost at an estimated 400,000 acres a year. Commercial fisheries and shellfisheries depend on estuarine wetland habitat as do recreational fisheries. Hundreds of millions of dollars are being lost each year in fisheries as a result of estuarine habitat losses. Wetlands also serve as important players in the improvement of water quality and in waste treatment. Through wetlands, important ground water sources are recharged as well.

In Massachusetts alone, wetlands support a highly productive fish and shellfish industry. In 1980 the harvest was worth nearly \$200 million, with something approaching 90 percent of the species harvested being dependent, in part, on coastal wetlands. The Charles River basin wetlands have been valued highly in studies conducted by the Army Corps of Engineers itself as protection from flood and storm damage and for purposes of pollution reduction. In the eastern part of Massachusetts, wetlands play a particularly important role in ground water in recharge. I know that all across the country wetlands are of comparable importance. We cannot afford to jeopardize them by allowing the section 404 program to fall into disarray.

I would like to think that those of us concerned about appropriate protection for the Nation's wetlands could count on open and productive discussion of the issues with the head of the agency with primary program responsibility. Unfortunately, Mr. Dawson does not have a track record which leads me to believe that that will be the case. He has maintained, in the face of disagreement from Senators who authored the Clean Water Act of 1977, from the Justice Department of this administration, and from numerous others who have worked with the section 404 program, that Congress did not intend it to be a wetlands protection mechanism. Given the legislative history, such a position is, as the Justice Department put it succinctly, "simply untenable." Certainly it does not reflect a willingness on Mr. Dawson's part to implement a reasonable wetlands program.

I would prefer not find myself in the position of opposing this Presidential nominee. But I also regret that this administration's dubious record for nominations for important positions of

environmental stewardship, continues. And while I do not question Mr. Dawson's integrity or competence, I do feel that his unwillingness to implement congressional intent makes him ill equipped to exercise the important duties of this position.

Mr. LEVIN. Mr. President, the President is entitled to a certain positive presumption relative to his nominees, since he has the right to choose his own officers and advisers. I have tried to give that to Robert K. Dawson just as I would to any other nominee. He is, even by his opponents' statements, a person of honesty and competence. However, I have decided to vote against his confirmation based on my review of his excessively narrow interpretation of the Corps of Engineers' functions relative to protecting the ecological and environmental values as required by law.

Typical of this excessively narrow construction is his view of section 404 of the Clean Water Act which gives the Corps of Engineers responsibility to issue permits for the discharge of dredge or fill material into the waters of the United States. He has, in fact, taken the view that "Congress did not design section 404 to be a wetland protection mechanism." Some of the principal congressional leaders in enacting the clean water statute have stated to the contrary and have pointed out that the legislative history clearly shows that section 404 was aimed at correcting the "unregulated destruction" of wetlands areas within the jurisdiction of the corps.

(See the hearings before the Subcommittee on Environmental Pollution of the Committee on Environment and Public Works, June 10, 1985.)

Senator Baker put it this way during Senate debate in 1977:

As you know, wetlands are a priceless, multiuse resource. They perform the following services:

Second, spawning and nursery areas for commercial and sports fish;

Third, natural treatment of waterborne and airborne pollutants;

Fourth, recharge of ground water for water supply;

Fifth, natural protection from floods and storms; and

Sixth, essential nesting and wintering areas for waterfowl.

We should be mindful of the fact that when these areas are polluted out of existence, we will have lost the very valuable free service of nature; and if toxic-laden dredged or fill material is discharged into wetlands, we risk poisoning the very foundation of our aquatic system.

And in the case of *Avoyelles Sportsmen's League, Inc. v. Marsh* (715 F.2d 897 1983), the U.S. Court of Appeals, Fifth Circuit, found that:

In fact, Congress repeatedly recognized the importance of protecting wetlands if the nation was to realize the statutory goal of

restoring the chemical and biological integrity of the nation's waters.

How, then, does Mr. Dawson explain his view that "Congress did not design section 404 to be a wetland protection mechanism"? In a letter to me dated December 2, 1985, he stated:

There are two major features of the Clean Water Act which led me to state months ago that the Congress did not originally design the Clean Water Act to be a wetland protection mechanism. First, most of the current wetland losses—80 to 90% by estimate of the Congressional Office of Technology Assessment—occur outside the scope of the Clean Water Act. Most of those losses are due to agricultural drainage and other actions which are not controlled by Section 404. Even an outright ban on all Section 404 activity or denial of every permit applied for would not significantly reduce the losses of wetlands. Until this reality is faced, it is unfortunately doubtful that true wetland protection measures will be developed.

This relates to the second reason for my statement. When Section 404 was adopted in 1972, wetlands were not mentioned. In response to judicial rulings the Corps expanded its program to include coastal wetlands and ultimately to include isolated interior wetlands. The idea of wetland regulation was endorsed in the 1977 Clean Water Act Amendments, but the Amendments did not prohibit discharges into wetlands. Rather, they continued the program then in effect which provides for a regulatory program which, under certain circumstances, allows wetlands to be filled. It is our judgment and it has been our experience that the regulatory program as designed by the Congress and implemented through the Environmental Protection Agency's 404(b)(1) Guidelines will prevent filling of some, but not all, wetlands. If the law were intended to preserve wetlands rather than to regulate them, the prohibitions of the statute would have to be strict. Wetland values, however, are recognized by the program as having great importance. Corps regulations applied to every single permit application require the value of wetlands to be given significant weight.

I find that explanation unacceptable and disturbing. Mr. Dawson believes that if the law were intended to preserve wetlands rather than to regulate them, then prohibitions in the statute would have to be strict.

Mr. Dawson's distinction is erroneous. We preserve certain values all the time by regulating actions relative to them or which threaten their existence. We preserve air quality by regulating auto emissions even though we do not prohibit those emissions or even prohibit totally the presence of substances in them which are deleterious to air quality. We help preserve our national parks by regulating where people can camp even though we do not prohibit camping altogether. Mr. Dawson's interpretation of section 404 reflects an unbalanced perspective of the Corps' functions. The purpose of the Clean Water Act, according to the Government's own brief in *U.S.A. versus Riverside Bayview Homes*, is to "promote and maintain the integrity of the Nation's waters by controlling pollutant discharges at

their source." And the regulatory assertion of jurisdiction by the Corps is stated in that brief to be "to insure that the critical ecological functions performed by wetlands are not unnecessarily destroyed." Is "preventing unnecessary destruction" protection? Or would one have to prevent any destruction in order to achieve the goal of protection? Do we protect ourselves from injury by putting on seat belts when we drive, or must we stop driving in order to say we are protecting ourselves? The answer is obvious, and I am afraid Mr. Dawson's approach is unbalanced and not in keeping with congressional intent or with court interpretation. If he is confirmed, I surely wish him the best—but I cannot consent to his confirmation.

Mr. DANFORTH. Mr. President, the controversy about the pending nomination centers generally on the protection of our Nation's wetlands and more particularly on the administration of section 404 of the Clean Water Act by the Corps of Engineers under Mr. Dawson's direction.

Section 404 requires permits to be issued prior to the discharge of dredged or fill material in the Nation's waters. In Missouri, the Department of Conservation—an independently financed, nonpartisan agency—plays an active role in the permitting process. The longtime director of the department, Larry R. Gale, discussed that experience in a letter earlier this year to Senator CHAFEE. He expressed serious concerns.

For example, Mr. Gale said that riparian wetlands have been defined too narrowly, reducing the amount of protection afforded to bottomland hardwoods in Missouri. He also said that too often the Corps allows fill material to be defined as waste, which is not regulated under section 404, with adverse results for the environment:

Bottomland hardwood clearing that results in "waste" trees and other material placed in stream channels and "de minimus" fill in wetlands is deleterious to water quality and the biological integrity of the nation's waters, regardless of definition. By using the correct terminology, a person can escape Corps' regulation, convert wetlands to other uses, and channelize streams. . . . We have documented the direct loss of 2,227 miles of stream channel to this activity with a corresponding loss of water quality and aquatic life.

Finally, Gale said that the Corps has not been cooperative in requiring restoration or mitigation of areas where illegal activities have occurred:

Corps enforcement on these matters has been lenient and issues have been allowed to become protracted. As the months and, in some cases, years drag by, wetland and channel losses become irrecoverable.

Mr. President, I am not going to oppose the Dawson nomination. I believe that Presidential nominees should be judged on their competence and integrity, and no one has chal-

lenged Mr. Dawson on those grounds. Except in extreme circumstances, the President is entitled to have the advisers of his choice. However, I also believe that preservation of the Nation's rapidly dwindling wetlands is a matter of serious concern, and I would not want this vote to be interpreted otherwise.

Mr. President, I ask unanimous consent that the text of the letter from Larry R. Gale to Senator CHAFEE appear in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MISSOURI DEPARTMENT
OF CONSERVATION,

Jefferson City, MO, May 30, 1985.

HON. JOHN H. CHAFEE,
U.S. Senate, Dirksen Office Building,
Washington, DC.

DEAR SENATOR CHAFEE: The International Association of Fish and Wildlife Agencies called our attention to your oversight hearings on Section 404 of the Clean Water Act. The Missouri Department of Conservation has sought to maintain aquatic and wetland habitat quality through the Corps of Engineers' Regulatory Functions Program for over nine years. Perhaps our experiences would be of interest.

The Corps of Engineers' Regulatory Functions Program in Missouri is administered by five District and four Division offices. Four of our Department professionals coordinate both Section 404 and civil works issues, plus maintain close working contact with the Environmental Protection Agency and the U.S. Fish and Wildlife Service. We also cooperate with the Missouri Department of Natural Resources, the State Clean Water and Section 401 authority. The close working relationship established between the reviewing agencies in Missouri has been largely responsible for those cases where wetland protection has been attained under Section 404.

In numerous instances where wetland protection has been less than desirable, a common denominator has been the Corps' inability to take jurisdiction over activities impacting wetlands and water quality. Frequently this inability stems from the definitions established by federal rule to guide the Corps' actions. Missouri's wetland resources are principally bottomland hardwoods adjacent to streams and rivers. Except for headwater streams, the Corps has taken jurisdiction over most activities involving dredge or fill in stream and river channels. The adjacent riparian wetlands have unfortunately not always met the Corps' wetland definition. We find it frustrating that this issue persists in Missouri in spite of the *Avoyelles v. Alexander* ruling in Louisiana.

A second jurisdictional problem concerns the definition of fill in wetlands. This issue involves the semantics of "fill" versus "waste"; the former is regulated under Corps interpretation, the latter is not. The impact on wetland values and the intent of Congress seems to have been ignored. Bottomland hardwood clearing that results in "waste" trees and other material placed in stream channels and "de-minimus" fill in wetlands is deleterious to water quality and the biological integrity of the nation's waters, regardless of definition. By using the correct terminology, a person can escape

Corps regulation, convert wetlands to other uses, and channelize streams.

The issue of stream channelization is of particular concern to us. We have documented the direct loss of 2,227 miles of stream channel to this activity with a corresponding loss of water quality and aquatic life. Although this activity is contrary to the goals of the Clean Water Act, we have had difficulty with the federal agencies taking jurisdiction because of the definitional problems described above. While the issue is argued, more miles of stream channel and adjacent wetlands have been lost and tons of sediment have degraded the nation's waters.

Our problems with Section 404 administration is not limited to definition restrictions. Missouri has 38,000 miles of head water streams covered by a nationwide 404 permit. These streams are extraordinarily important to the aquatic health of receiving waters, yet requests for District Engineers to take discretionary authority over fill activities in headwaters have routinely been denied. We have been informed that discretionary authority would likely not be granted in any after-the-fact activity. This experience and state concerns for cumulative impacts to valuable headwater ecosystems lead to the recent denial of Section 401 certification of this nationwide permit.

The State of Missouri through the Department of Natural Resources elected to deny 15 nationwide permits during the Corps last rule-making effort. These denials are not permanent positions for 13 permits, but rather are aimed at securing regional conditions to assure wetland protection. The state will maintain denial for 330.5(a)(21) and (23), the nationwide permits covering surface mining and federally funded activities. This effort has been frustrated by differences between Corps Districts. The Corps has used, and threatens to continue to use, Paragraph 330.9 of their Rules to either force the Department of Natural Resources to either create a de facto permit program through the individual certification of nationwide permit requests or withdraw their denials. Congress provided a state option for assuming Section 404 regulation, but did not intend to penalize a state with program administration for denying unacceptable nationwide permits.

The Corps seems to place a high priority on speed in processing. Indeed, in a recent coordination meeting, a high level Corps official stated that the goals of the Act were being achieved because internal deadlines for granting permits were being met. Speed in processing should be a consideration, but the real priority should be protection of water quality. To date, the commenting agencies in Missouri have been working under a 21-day comment period with few problems on most before-the-fact applications. This is not the case in after-the-fact applications where our efforts center on restoration and/or mitigation to recover resource values. Corps enforcement on these matters has been lenient and issues have been allowed to become protracted. As the months and, in some cases, years drag by, wetland and channel losses become irrecoverable.

We do not suggest a radical fix for correcting these problems. Rather, clarification of goals, definitions and federal responsibilities could go a long way to resolve these matters. Since agencies changed with improving the Section 404 wetland definition have had problems doing so, the U.S. Fish and Wildlife Service expertise should be employed to

both establish the definition and mediate wetland jurisdictional calls. We also recommend that any definition employed by the agencies critically and objectively consider impacts to wetland functions. The Section 404(b)(1) Guidelines are supposed to add this measure of objectivity, but in our estimation they fall short of the mark. The U.S. Fish and Wildlife Service and our Department have developed considerable expertise in objectively assessing wetland and aquatic habitat conditions. Since wildlife is considered an environmental barometer and is an important component of the biological aspect of water quality under the Act, perhaps this expertise could be brought to bear in determining wetland impacts.

Presently, some landowners choose to ignore the Corps' permit program and proceed with their activities. To date, the record with after-the-fact permits would seemingly support those actions. Fortunately, few elect to do so, but those that do seemingly create much environmental damage. This situation could be vastly improved by mandating swift due process for violators. The Corps alleges that the federal judicial system is to blame. Development of administrative law capability for the Regulatory Program may be a means for reversing the serious losses caused by protracted after-the-fact permit resolution. The Corps could greatly improve matters by increasing their surveillance and enforcement efforts, plus undertaking a program of informing and educating the public.

Finally, we frequently hear that "Section 404 is not a wetland protection measure." We concede that technically Section 404 reads as a dredge or fill regulation. However, the position that many state concerns are covered by Section 402 and thus subject to state administration appears to be bureaucratic buck passing. If the wetland definition issue could be resolved, many of these issues could clearly fall under Section 404. It has been presumed by many that Congress intended a wetland protection law in Section 404. Perhaps a clarification of that goal is in order.

In summary, we find that Section 404 is not providing full wetland protection in Missouri principally because of restrictive jurisdictional determinations and little to no resolution of after-the-fact violations. We trust this resume of our experiences and observation will be of value of your deliberations. The opportunity to share these concerns and suggested remedies for your consideration is appreciated.

Sincerely,

LARRY R. GALE,
Director.

Mrs. KASSEBAUM. Mr. President, I should like to take just a moment to express my thoughts on the nomination of Mr. Robert Dawson to be Assistant Secretary of the Army.

I will begin by making it clear that I do plan to support Mr. Dawson's nomination. It is my belief that the President should be able to choose his own staff. Naturally, as he has done in this case, the President will select individuals whose views closely reflect his own. In addition, when considering a nominee I place a great deal of weight on the recommendation of the committee which has jurisdiction over the nomination. Mr. Dawson's nomination was favorably reported by the Committee on Armed Services by a vote of

13 to 1, with five members voting present.

Mr. Dawson should know, however, that I share many of the policy-related concerns which have been so ably expressed by a number of my colleagues. I emphasize, again, that these are considerations of policy, not of qualification, as I feel quite strongly that Mr. Dawson's extensive experience has more than prepared him for this position.

I do not believe it is appropriate to oppose a nominee because his actions reflect the administration's views, but I do feel it is the Senate's obligation to provide guidance to these individuals. The guidance I will offer Mr. Dawson is to reemphasize the concern of so many Senators about his wetlands policy, particularly as it relates to the Army Corps of Engineers duty to aid in the protection of these sensitive areas under section 404 of the Clean Water Act. We must remember that wetlands are an important element in natural flood and erosion control, and are vital to our water supply and the preservation of fisheries, various species of waterfowl and other plant and animal life. We all have an obligation to work to preserve the remaining wetlands in our country.

Mr. WILSON. Mr. President, I rise today to support Robert Dawson's nomination to be the Assistant Secretary of the Army for Civil Works. I support Mr. Dawson's confirmation because in the time that he has been the Acting Assistant Secretary, Bob has been an effective, responsible, and able administrator.

It is obvious from the debate at hand that the responsibilities of the Assistant Secretary of the Army for Civil Works touch many controversial areas. In particular, water development policy often generates disputes that continue long after the ultimate policy decisions have been made. Given the nature of the civil works operation, it is essential to have an administrator with unquestioned and uncompromised integrity. The next Assistant Secretary must be a tough negotiator with the utmost honesty and fairness.

Mr. Dawson has demonstrated his abilities as a tough and fair administrator through his efforts to resolve cost-sharing issues and user fee requirements with regard to new water resources project authorizations. Further, Mr. Dawson has illustrated his willingness to resolve controversial matters as he has responded to many California concerns. There are critics of Bob Dawson in my State, but it is my sense that he has been conscientious and fair in his efforts to effect positive policy solutions; and in fact most of the criticism directed at him has come from the development community who have complained that he

has been too tough in his administration of permit requirements.

Mr. President, it is rare that the Members of this body unanimously agree on a significant policy matter. While there is great debate regarding various policy matters within the Assistant Secretary's jurisdiction, there is no debate that the integrity of the next Assistant Secretary of the Army for Civil Works must be unquestioned. I have read a great deal regarding disputes over policy decisions during Mr. Dawson's tenure as Acting Assistant Secretary; however, my colleagues on both sides of the issue have indicated that they "Do not question Mr. Dawson's character or integrity."

Therefore, because of Bob Dawson's proven record of integrity and character and because his experience will enable him to ably serve as the Assistant Secretary of the Army for Civil Works, I am supporting his nomination. For these reasons, I urge my colleagues to join me in support of Bob Dawson's confirmation.

Mr. MURKOWSKI. Mr. President, I rise in support of the nomination of Robert K. Dawson to be Assistant Secretary of the Army for Civil Works.

Bob Dawson has been acting in this capacity for quite some time. During his tenure he has actively pursued the administration's policies of regulatory reform and, at the same time has maintained environmental protections in the 404 Program.

Opponents charge that Mr. Dawson has implemented "questionable" reforms in the name of regulatory reform. Yes, changes have been made. However, regulatory reform does not mean regulatory relaxation as opponents to this nomination would have us believe.

Opponents contend that Mr. Dawson has dismantled the environmental component of the regulatory program. This is simply not true, and Mr. Dawson has responded in detail to these accusations during four oversight hearings in 5 months.

As a matter of fact, since regulatory reform was initiated: More permits are being denied than ever before; more mitigation is being required; environmental controls have been expanded; and there is now decreased decision time, more public confidence in the program, and better voluntary compliance.

In addition, Mr. Dawson has given the public more certainty in the 404 permitting program. Guidelines and deadlines have been set to streamline the process. In the past, implementation of the 404 Program has resulted in unnecessary delay, controversy, and waste of resources. Excess bureaucracy does not contribute to protecting the environment, it simply wastes the energies and resources of the public and the agencies.

Reducing the bureaucratic burden is the purpose of the Presidential Task Force on Regulatory Reform. Mr. Dawson has been instrumental in carrying out a number of regulatory reforms proposed by the task force. Review time for permit applications and the complexity of the program have been reduced during Dawson's tenure, both as Deputy Assistant Secretary and as Acting Assistant Secretary. He has done this without harmful impact on the environment and, in fact, has expanded the corps' jurisdiction in the area of headwaters, isolated waters, and wetlands.

It must be noted that the 404 Program has only a minor impact in wetland preservation, because 80 to 90 percent of the wetlands lost annually do not fall under the statutory framework of the 404 Program. True wetland protection would require additional legislation, which Mr. Dawson has already indicated he would support.

In Alaska, we have been battling over regulation of log transfer facilities for well over 3 years. We faced a situation where both the EPA and the corps had nearly identical requirements in their log transfer facility permits. The Corps of Engineers under Mr. Dawson has finally agreed to a memorandum of understanding with the EPA which eliminates excess regulation, and maintains 404 environmental protection requirements. This is just one example of how regulatory reform can work without undermining the 404 Program and its environmental protections.

Bob Dawson is highly qualified for this position. He has worked with the corps for well over 10 years in both Democratic and Republican administrations. Prior to this he spent 9 years working in the U.S. House of Representatives. During his tenure working for the U.S. Government, he has proven himself to be extremely knowledgeable, responsive, and a strong leader.

A true professional, leader, and expert in the field of civil works, Mr. Dawson merits the full support of this body for the nomination of Assistant Secretary of the Army for Civil Works and I urge my colleagues to vote yes.

Mr. DURENBERGER. Mr. President, I rise today to oppose the nomination of Robert Dawson to be Assistant Secretary of the Army for Civil Works.

I do not often oppose a nominee of the President. It is my view that the President has the right to select the individuals who shall serve in the executive branch and assist the President in carrying out his duties. In offering its consent to a nominee, the Senate should generally keep to questions of the integrity and qualifications of the nominee for the post he or she is to assume. Considerations of

policy and political philosophy should not be part of the nominations process here in the Senate.

But the nomination of Robert Dawson to be Assistant Secretary of the Army is the unusual case. There is no doubt that Mr. Dawson has the necessary qualifications for the position. He has been acting in that position for some time and was the Deputy Assistant Secretary from the beginning of the Reagan administration. In addition, he served here on Capitol Hill on the House side in a capacity that would make him familiar with the duties and obligations for the position to which he has been named.

I have personally had the pleasure of working closely with him in an attempt to advance a number of water resource development projects important to the State of Minnesota. Examples include the Rochester, Bassett Creek, Chaska, and Mankato Flood Control projects, the Upper Mississippi River Master Plan, the connecting channels on the Upper Great Lakes and the thorny issue of St. Lawrence Seaway tolls. It was those opportunities to work with Mr. Dawson which led me to the conclusion that he is well qualified for the position and a man of sound personal integrity. And if his activities in water resource development areas were the only question before the Senate, he would be confirmed without dissent.

But Mr. Dawson's responsibilities include wetlands protection as well as water resource development, and those of us who oppose his nomination today do so because he refuses to recognize that fact. He should know better.

It is just because Mr. Dawson has long been associated with the duties and responsibilities that he will assume, if confirmed as the Assistant Secretary, that this nomination is being opposed here in the Senate. He has made clear by his actions over many months, indeed years, the approach he will take to the job as the chief administrative officer of the Corps of Engineers. And it is clear to many of us that the Dawson approach to the job is not consistent with the policies, particularly the policies for wetlands protection, that have been established by the Congress.

The Senator from Rhode Island, Mr. CHAFEE, who chairs the subcommittee with jurisdiction over the wetlands protection law, has held four oversight hearings on implementation of that law. And Mr. Dawson has appeared as a part of those hearing on many occasions. Mr. CHAFEE, and the Chairman of the Committee on Environment and Public Works, Senator STAFFORD, have been compelled to read the legislative history of the Clean Water Act to Mr. Dawson to make clear to him the intent of the Congress with regard to

section 404. The hearings have also been used to restate the views of Jim Watt, Bill Clark, Bill Ruckelshaus, and Ray Arnett, all of whom at one time or another felt it their duty to point out in forceful terms to Mr. Dawson that the Corps of Engineers was failing to carry out the will of the Congress under the law of the land to protect our valuable wetland resources.

But it is fair from the record to conclude that none of this instruction has had an effect on Mr. Dawson's understanding of the duties and responsibilities of the Assistant Secretary of the Army for Civil Works as the principal agent for implementing section 404 of the Clean Water Act. Mr. Dawson, despite hearing the record read to him from the dais at a Senate hearing refuses to acknowledge that Congress intended to protect wetlands through section 404. And perhaps, refuses to acknowledge that it is the Congress, and not the executive branch, which is assigned in our system of government with the responsibility to make policy. It is not for Mr. Dawson to judge whether section 404 is well-suited as a mechanism to protect wetlands. It may or may not be. But that is for the Congress to determine. It is only for Mr. Dawson to execute, faithfully execute, the policies established by the Congress in this matter.

Mr. Dawson has made it clear through his words and his actions that he is not inclined to faithfully execute the policies established by the Congress, if Senate confirmation should hinge on any question, it is that one. I, therefore, believe that it is the duty of the Senate under our system of government to refuse to give consent to the nomination of Mr. Dawson to be Assistant Secretary of the Army for Civil Works.

Mr. MATTINGLY. Mr. President, I rise today to speak in favor of the confirmation of Mr. Robert K. Dawson to the position of Assistant Secretary of the Army for Civil Works, and I strongly urge my colleagues to give their consent to this most qualified individual. Bob Dawson has proven over a long period of time that he is a capable, conscientious professional who has performed in a long series of positions in a most admirable manner.

Now, let me assure my colleagues who have expressed their disapproval of Mr. Dawson's nomination, that I share their concerns about the importance of preserving the valuable natural resources of our country. And I will not condone any policy which endangers our vital wetland resources.

On the other hand, I remind my friends that our constitutional form of government attempts to establish a balance between the wishes of the executive branch, reaction of Congress to those wishes, and the final arbitration and interpretation of the judi-

cary. As a member of the executive branch, Bob Dawson does not deserve to be condemned for his diligence in attempting to carry forward President Reagan's agenda of regulatory reform and simplification * * * that is his job. In fact, even if we were to reject this particular nomination, the President would simply select another individual—who might not be as well qualified in background, training and ability—to attempt to carry forward the same executive branch policy goals.

I would suggest to my colleagues that we will be much better served by approving the nomination of Bob Dawson, who has demonstrated that he is not only capable, but also that he is open-minded and will at least attempt to reach mutually acceptable solutions to competing interests. He has shown that he is not the type of individual who will overtly, or covertly, attempt to circumvent the will of the legislative branch once we have officially taken a clear position on a subject. Should we disapprove of every nominee who indicates that he or she will use existing statutes, or seek to have changes made in current law, which will in that person's best judgment make improvements in the way his or her particular office functions and interacts with the regulated community?

Mr. President, I can vote for confirmation today for two reasons: as I have indicated, Bob Dawson has the training, background, and proven capability to handle the detailed, technical, managerial requirements of the job; and second, as a Member of this body familiar with the esteemed chairman of the Committee on Environment and Public Works and the vigorous and effective manner in which he and the other members of the committee pursue their defense of our environmental treasures, I know that I and our fellow Americans can rest secure in the knowledge that the committee will exercise its oversight to provide the necessary balances envisioned by our Founding Fathers.

In my opinion, Mr. Dawson is possessed of all the attributes required for confirmation to this post. Should his advocacy of regulatory changes in the future run contrary to the will of Congress, I am confident that our oversight responsibilities will lead us to swiftly react to correct the condition. I urge the Senate confirm this nomination.

Mr. WEICKER. Mr. President, today I supported Mr. Dawson's nomination to be Assistant Secretary of the Army for Civil Works, however, I would like to share some thoughts about the duties upon which he is about to officially embark, with the advice and consent of the Senate.

There has been much dispute over Mr. Dawson's previous handling of the Clean Water Act's section 404 Pro-

gram, and I will not get involved in that debate at this point. I do want to point out that the conservation of our wetlands should be one of this Nation's highest priorities. These areas play a critical role in the survival of many species of fish, wildlife, and shellfish. They also play an important role in improving water quality, performing waste treatment, reducing the effects of floods and storms, and recharging underground water systems. Even so, nearly 60 percent of our wetlands have been destroyed, and the destruction continues at the rate of 300,000 acres per year.

Section 404 of the Clean Water Act clearly includes wetlands protection, and to interpret it in any other way ignores 8 years of legislative history. I would like to emphasize to Mr. Dawson that he is required to administer and enforce the law as Congress intended, even if he disagrees with it. We in Congress will be following the activities of the Assistant Secretary very closely to assure that the law is enforced, and that the valuable resources contained in our wetlands are preserved. Thank you, Mr. President.

Mr. COHEN. Mr. President, as we consider the nomination of Robert K. Dawson to be Assistant Secretary of the Army for Civil Works, I wish to address the very important issue of wetlands protection, which is crucial to the preservation of the ecological diversity or our environment in the future.

The millions of acres of wetlands which exist in this Nation, from coastal estuaries, to prairie "potholes," marshes, and river and stream habitats, serve an enormously important purpose in their support of many diverse species of flora and fauna. Because they produce an abundance of microbes, plants, and insects, wetlands support the life cycles of valuable fish, shellfish, birds, and animals. Estimates of the value of commercial and recreational fishing supported by wetlands go as high as \$12 billion a year.

In addition, the existence of wetlands helps replenish ground water supplies, filter out naturally occurring toxic pollutants, and provide natural flood control. It is obvious, then, that the preservation of these unique ecosystems should be of concern to the Federal Government. The continued protection of our wetlands is essential if environmental benefits are to be realized.

The Office of Technology Assessment has estimated that over 100,000 acres of wetlands are lost each year due to the dredge-and-fill activities regulated by the Army Corps of Engineers under section 404 of the Clean Water Act. Other unregulated activities account for an additional wetlands loss of 200,000 acres a year. Over the past 200 years, this country has seen

the disappearance of 50 percent of wetlands in the lower 48 States. The pressure is intense to utilize wetlands for development purposes, and it is in our best interest to control such development where possible and reasonable.

The section 404 wetlands permitting program gives us just such an opportunity for protection. It is the single most important tool available for restricting wetlands development, and I believe it should be utilized in such a manner by the corps. With the continuing disappearance of these valuable lands, it is crucial that we attend to the issue of adequate wetlands protection.

It is my hope that Mr. Dawson will read carefully the clear signals being sent him by Members of the Senate and work with the appropriate committees to achieve continued protection of our endangered wetlands. The tool of control is available to him, and I encourage him to take full advantage of it as Assistant Secretary of the Army for Civil Works.

Mr. RIEGLE. Mr. President, I rise today to join in the opposition to the nomination of Robert Dawson as Assistant Secretary of the Army for Civil Works. I do not doubt my colleagues who point out that Mr. Dawson is a man of good character, but the record shows that he has refused to administer the Wetlands Protection Program created in section 404 as Congress intended. We need to send a message to the Army Corps of Engineers and to the administration that we disagree strongly with the wetlands policy and will not tolerate this blatant disregard of Federal law as created by Congress and upheld time and again by the Supreme Court.

The price of ignoring the need to protect wetlands in this country is very high. Several of our colleagues have outlined the problems of wetland destruction and its impact on the environment and the economy. My own State of Michigan has 3.2 million acres of wetlands. But we have lost 71 percent of our wetlands and we cannot afford to continue to lose these acres that are so important to wildlife, waterfowl, and fish populations.

Decisions that affect the precarious balance between people and the environment—and the need to preserve and protect our valuable natural resources—are far too important to place in the hands of someone whose commitment to stewardship is under serious question.

Mr. KENNEDY. Mr. President, I fully understand—and I share—the concerns of so many Americans about the importance of protecting and preserving our Nation's wetlands, and I yield to no one in my strong belief that section 404 of the Clean Water Act should be fully and aggressively implemented by the agencies of Government charged by statute to per-

form that duty. I believe that Congress' intent when it passed that legislation is clear. The Supreme Court has been similarly clear in requiring Federal officials to enforce those Federal statutes that fall within their jurisdiction—as section 404 does within Mr. Dawson's official responsibilities as Assistant Secretary of the Army (Civil Works).

I understand that Mr. Dawson's record with respect to full implementation of section 404 has not been satisfactory to many Senators, and I can see why that is so. But I also understand that his failures in this regard may not be personal in nature so much as they may be the product of an erroneous and shortsighted and misguided administration policy.

It is my hope that Mr. Dawson—in the performance of his duties as Assistant Secretary of the Army—will give full and complete consideration to these concerns in the future. These are not just my concerns or the concerns of those Senators who are casting their vote today in opposition to his nomination. Nor are they the narrow or extreme concerns of the many environmental groups who have worked so hard and so effectively against Mr. Dawson's nomination. But they are also the very real and very deep concerns of millions of American citizens who care about the future of one of this country's most important and most endangered and irreplaceable natural assets—our wetlands. And I daresay that these concerns are also shared by many Senators who, like me, plan to support Mr. Dawson's nomination today.

In my dealings with Mr. Dawson, I have impressed upon him my views with respect to the wetlands—as well as with respect to many other matters of some importance to the people of my State. I have found him to be accessible and interested and openminded. I hope he will continue with that kind of attitude, but I particularly hope that he will give full consideration to the legitimate concerns of so many of us that section 404 be fully and aggressively implemented.

I expect that Mr. Dawson will be confirmed today, and as I cast my vote in support of his confirmation, I must also relay the message to him that we will be watching very carefully—and monitoring very closely—the way in which section 404 of the Clean Water Act is administered and implemented in the future. And we will be doing this with the hope that Mr. Dawson will in fact recognize that our wetlands are an important and vital part of our environmental heritage and must not be lost to future generations of Americans.

Mr. BINGAMAN. Mr. President, I rise today to oppose the nomination of Robert Dawson as Assistant Secretary of the Army for Civil Works. The

Senate floor debate today has clearly defined the two positions concerning Mr. Dawson. Those in favor of his nomination feel that the President has the right to nominate people of his choice for high office. They also feel that Mr. Dawson has simply carried out the programs and policies of the administration. Opponents of the nomination feel that Mr. Dawson's policies have hurt the environment.

I have considered both points of view and I feel I must agree with my colleagues who contend that Mr. Dawson, in his role as Deputy Assistant Secretary and as Acting Assistant Secretary, has furthered questionable policies of the administration. He has been accused of making changes under the guise of "regulatory reform" to the Clean Water Act's section 404 dredge and fill permit program. These actions have had an unfortunate impact on our Nation's wetlands. Section 404 requires permits from the U.S. Army Corps of Engineers for disposal of dredge of fill material into the waters of the United States. I must agree with the distinguished chairman of the Senate Environment Committee and others that this legislation intended that wetlands were to be included. Nevertheless, section 404 does not prohibit development in wetlands. Instead it allows the merits of proposed wetlands alterations to be reviewed, calling only on the corps to require alternatives or mitigation to minimize environmental damage.

WETLANDS—A VALUABLE RESOURCE

Wetlands are a tremendously valuable national resource. Their swamps, bogs, wet meadows, river bottoms, fresh and saltwater marshes, prairie potholes, and bottomland hardwoods are essential to fish and wildlife as spawning, feeding, breeding, and resting habitats. They also serve humans by reducing flood volume and thus flood damage; controlling local storm runoff; recharging ground water supplies; filtering pollutants and sediments from our water; controlling erosion and increasing fisheries. And they have valuable recreational, educational, and scientific uses.

Unfortunately we are losing much of this precious resource. In recent years nearly 50 percent of this country's wetlands have been lost. They are disappearing at a rate of 458,000 acres per year. One million acres of coastal marsh have been lost in just the last 20 years.

WETLANDS IN NEW MEXICO

Wetlands are not found just in coastal areas. They are important as well in States throughout the arid West, such as New Mexico.

Forty percent of New Mexico's wildlife depends upon riparian habitat for survival. The State's wetlands and playas are unique reservoirs of plant

and animal life, supporting recreational activities, such as fishing as well.

Like elsewhere, however, New Mexico's wetlands are already scarce and need protection. As a result, I feel strongly that we must make every effort to protect them.

Under Mr. Dawson's stewardship, first as Deputy Assistant Secretary and then Acting Assistant Secretary, the corps, at the administration's direction, has ignored its responsibility under the Clean Water Act to protect wetlands from drainage and development. This view has been expressed as well by the other two agencies that have a role in wetlands protection—the Environmental Protection Agency and the Interior Department. Respected national conservation and wildlife organizations such as the National Wildlife Federation, the National Audubon Society, and the Environmental Defense Fund, have also questioned the administration's wetlands policies.

It appears to me to be clear from Mr. Dawson's record that his continued administration of the 404 Program could lead to further wetland losses. The Nation simply cannot afford that. In the interest of protecting our critical, diminishing wetlands, I therefore intend to vote against his nomination.

I do not take this position lightly. I have met Bob Dawson and find him to be a likeable individual of strong character and integrity. I am sorry that, for whatever reason, he has pursued this antienvironmentalist course. But because of it, I feel I cannot support him.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield 2 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The distinguished minority leader is recognized.

Mr. BYRD. Mr. President, I support confirmation of the nomination of Robert K. Dawson as Assistant Secretary of the Army for Civil Works.

I have known Mr. Dawson some time now. His initial assignment in the Office of the Assistant Secretary of the Army for Civil Works was as principal Deputy to the Assistant Secretary. The 3 years he served in this position have afforded him an excellent opportunity to become intimately familiar with the water resources program carried out by the Corps of Engineers. During this time, also, he has had the opportunity to become familiar with the corps' regulatory functions and to initiate many of the reforms desired by the President.

Since May 1984, he has been the Acting Assistant Secretary, and, in my view, he has performed this job in an exemplary manner. He has been fair, openminded, and understanding about the problems faced by navigation interests, those needing additional mu-

nicipal and industrial water supplies, and, in particular with the victims of flood disasters. In my home State of West Virginia, he has taken a personal interest in an area devastated by floods in 1977 and 1984.

He has traveled to the Tug Fork area in the past, talked with the residents, and he has taken the time to observe the conditions under which they have had to live. As a result of his interest, and under his guidance, the corps is moving ahead with construction of levees and floodwalls, and with other measures to help.

Following our most recent flood, which devastated 29 counties, Mr. Dawson has gone to West Virginia at my request to ascertain what assistance the corps might lend.

He has been available and active in the resolution of problems. I am convinced that we should go forward with approval of his nomination as Assistant Secretary of the Army for Civil Works. He certainly supports the Corps of Engineers and the fine work it performs. Additionally, he knows better than most the professionalism and skill which the corps—military and civilian alike—must bring to bear on water resources development problems.

My State has many beautiful water courses and wetlands. We recognize the value of clean water for public health and good habitat for fish and wildlife resources. Hunting and fishing are major industries in my State. I believe Robert Dawson is managing the 404 Program in a way that balances the need to maintain high water quality standards and at the same time allows necessary development projects to proceed.

I urge my colleagues to join with me in leading support to Mr. Dawson's confirmation as Assistant Secretary of the Army for Civil Works. I am confident that he will continue his wise stewardship of our important resources.

ROBERT K. DAWSON, ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

Mr. DOLE. Mr. President, Bob Dawson is not only respected throughout the executive branch, but he has also earned high marks by Members of this body and our colleagues in the House. Mr. Dawson has proven that he is an able administrator who has taken on some tough jobs in his various positions in Government.

I can understand some of the concerns expressed by my colleagues regarding Mr. Dawson's administration of section 404 of the Clean Water Act. I hope those concerns have been adequately addressed. In my judgment, Mr. Dawson has only implemented this administration's policies in the very important area of regulatory reform. If individuals have specific concerns about section 404, then perhaps it should be reviewed. However,

it is not reason enough to hold up this nomination. Mr. Dawson, I am sure, is now rather mindful of the concerns expressed by Members of this body and will be conscious of them when making environmentally sensitive issues in his new capacity. Still, Mr. Dawson should not be penalized because he has done an effective job in carrying out the administration's policies.

In addition, after careful examination, the Committee on Armed Services, chaired by the able and distinguished senior Senator from Arizona, favorably reported Mr. Dawson's nomination. The committee invited the chairmen and ranking minority members of the Committee on Environment and Public Works and the Subcommittee on Environmental Pollution to participate in the confirmation hearing—and both chairmen did participate. All sides were heard.

The Army's Civil Works Program, which dates from 1824 and provides the Army and the Nation a dual capacity—nation building in times of peace and defense construction in times of conflict—is too important to be without a confirmed Assistant Secretary.

Mr. THURMOND. Mr. President, I would like to take 1 minute this morning to put this entire debate about Bob Dawson into perspective.

The bottom line is that some Senators do not like the administration's approach to the section 404 Corps of Engineers Program. Bob Dawson has had some responsibility for the administration of that program over the last 5 years. So this group of Senators is taking out their policy disagreements with President Reagan on the President's nominee.

The distinguished Senator from Rhode Island, who is leading the opposition to this nomination, said in his statement on Monday that his opposition had nothing to do with Mr. Dawson's character or his integrity. He said it had nothing to do with Mr. Dawson as an individual. I cannot imagine a clearer admission that this is a policy dispute.

Now the Senator from Rhode Island chairs the subcommittee that has jurisdiction over this section 404 Program. He has had four hearings in the last several months on the program. Mr. Dawson has changed his approach to the program, at least in part, as a result of these hearings. That is the way the policy oversight process should work in the Congress. But we should not say that Mr. Dawson is no longer fit for Government service because he and the Senator from Rhode Island disagree about the implementation of a Government program.

The Armed Services Committee has considered this nomination and by a virtually unanimous vote has reported Mr. Dawson favorably to the Senate. A

public servant as devoted and as competent as Mr. Dawson deserves the thanks of his country for being willing to serve, and I hope those thanks are offered today by an overwhelming vote in favor of his nomination.

Mr. President, I only want to say that Mr. Dawson was appointed by President Reagan. He was recommended by Secretary of Defense Weinberger, and he was also recommended by Secretary of the Army Mr. Marsh. He was approved by the Senate Armed Services Committee 13 to 1.

Since the start of the confirmation proceedings, the following Senators have spoken in his behalf: Senator JOHNSTON, of Louisiana; Senator DENTON, of Alabama; Senator WARNER, of Virginia; Senator GORTON, of Washington; Senator GOLDWATER, of Arizona, chairman of the Armed Services Committee; Senator WALLOP, of Wyoming; Senator HEFLIN, of Alabama; Senator STEVENS, of Alaska; Senator ARMSTRONG, of Colorado; Senator SYMMS, of Idaho, Senator BYRD, of West Virginia, and myself.

Mr. President, previously, on October 18, 24 Senators signed a letter urging that this nomination be brought up. I really do not feel there is any merit in the opposition here. The gentleman here, Mr. Dawson, has merely carried out the policies of this administration. If these policies are wrong, the way is to try to change those policies.

I think he is a man of integrity, a man of character, a man of ability, a man of dedication, and he should be confirmed.

Mr. CHAFEE. Mr. President, how much time have I left?

The PRESIDING OFFICER. The Chair is advised that the Senator from Rhode Island has 6 minutes remaining.

Mr. CHAFEE. Mr. President, I see we have an editorial here from the Wall Street Journal saying that everything is fine with Mr. Dawson. That reminds me of the statement that President Kennedy made. Having the Wall Street Journal endorse Mr. Dawson is like having Il Osservatore endorse the Pope. It is no surprise.

Mr. President, all who are opposed to the nomination of Mr. Dawson have spoken, I believe. How much time is remaining to the proponents, I ask the Chair?

The PRESIDING OFFICER (Mr. DENTON). There is no time remaining.

Mr. WARNER. Mr. President, I ask unanimous consent that I may proceed for a few minutes to respond to Mr. CHAFEE.

The PRESIDING OFFICER. The Senator from Rhode Island has 4 minutes.

Mr. WARNER. Will the Senator accept a question?

Mr. CHAFEE. No, Mr. President. The opponents have 4 minutes. The proponents have how much?

The PRESIDING OFFICER. There is no time for the proponents.

Mr. CHAFEE. If the Senator wishes to ask unanimous consent for a few minutes, I would have no objection to that.

Mr. WARNER. I do not think that would be appropriate. I thought he might want to yield for a question on his time.

Mr. CHAFEE. No; Mr. President, I find yielding for questions on my time is a dangerous business. I thought I might just conclude.

Mr. President, we have heard the arguments. I hope our colleagues have listened closely to the presentation. Those of us opposed to Mr. Dawson feel strongly that if the Members of the Senate are concerned about the wetlands of this Nation, they will vote no to the confirmation of Mr. Dawson.

We have been down this road before, Mr. President. We have dealt with Mr. Watt, we have dealt with Mrs. Gorsuch. I think this is another strong case along exactly the same lines. I urge my colleagues to vote no on the confirmation of Mr. Dawson for the betterment of the Nation's wildlife, for the betterment of our environment as a whole.

I yield back the remainder of my time, Mr. President.

Mr. President, the yeas and nays have been ordered, have they not?

Mr. THURMOND. Mr. President, I believe he has yielded back his time. All time has expired and we are ready to vote.

The PRESIDING OFFICER (Mr. KASTEN). All time has been yielded back.

Mr. THURMOND. And the yeas and nays have been ordered?

The PRESIDING OFFICER. That is correct.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, the opponents have agreed that the distinguished Senator from Texas [Mr. GRAMM] may speak for 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Texas.

Mr. GRAMM. I thank the distinguished chairman for yielding the floor.

Mr. President, I rise in support of Robert Dawson for this appointment. There are 3 million people who work for the Federal Government. The

President gets to appoint about 3,000 people. We hold elections every 4 years to elect a President to set a policy for the Nation and he ends up with only 3,000 people out of the 3 million who are carrying out that policy. Sometimes, there are those of us who do not agree with that policy. But no one has challenged Mr. Dawson's ability, no one has challenged his integrity.

There are those who oppose the policies that he has implemented on behalf of President Reagan; but I submit, Mr. President, that Ronald Reagan was elected President, he was elected overwhelmingly, and within the constraints of knowledge and integrity, he has the right to appoint anybody he wants to appoint.

I strongly support this appointment because, first, I support that right. I think sometimes the Government ought to run their own candidate for President, then they can have their 3 million and the 3,000 appointed officials, but they have not done that. I believe the President should be given this appointment.

Second, I support Mr. Dawson because my city and county officials all over Texas strongly praise him. They believe he has worked with them, that he has set a new balance between environment and growth, between protecting the environment we all benefit from and creating the jobs that we all need.

I believe it is important that this appointment be confirmed and I rise in strong support of Robert Dawson.

I yield the floor, Mr. President.

Regular order, Mr. President. The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Robert K. Dawson, of Virginia, to be an Assistant Secretary of the Army? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. EAST], the Senator from Arizona [Mr. GOLDWATER], the Senator from Maryland [Mr. MATHIAS], and the Senator from Oregon [Mr. PACKWOOD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA] is necessarily absent.

I also announce that the Senator from Florida [Mr. CHILES] is absent because of illness.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 60, nays 34, as follows:

[Rollcall Vote No. 352 Ex.]

YEAS—60

Abdnor	Bentsen	Boschwitz
Armstrong	Boren	Bumpers

Burdick	Hatch	Pressler
Byrd	Hatfield	Pryor
Cochran	Hecht	Quayle
Cohen	Hefflin	Rockefeller
D'Amato	Helms	Roth
Danforth	Inouye	Sasser
DeConcini	Johnston	Simpson
Denton	Kassebaum	Specter
Dixon	Kennedy	Stennis
Dole	Laxalt	Stevens
Domenici	Long	Symms
Evans	Mattlingly	Thurmond
Exon	McClure	Trible
Garn	McConnell	Wallop
Glenn	Moynihan	Warner
Gorton	Murkowski	Weicker
Gramm	Nickles	Wilson
Grassley	Nunn	Zorinsky

NAYS—34

Andrews	Harkin	Melcher
Baucus	Hart	Metzenbaum
Biden	Hawkins	Mitchell
Bingaman	Heinz	Pell
Bradley	Hollings	Proxmire
Chafee	Humphrey	Riegle
Cranston	Kasten	Rudman
Dodd	Kerry	Sarbanes
Durenberger	Lautenberg	Simon
Eagleton	Leahy	Stafford
Ford	Levin	
Gore	Lugar	

NOT VOTING—6

Chiles	Goldwater	Matsunaga
East	Mathias	Packwood

So the nomination was confirmed.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. HEFLIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I will be very brief. I simply wanted to say, on the last vote dealing with the confirmation of Robert Dawson, first of all, I thought that both sides did an excellent job of presenting the qualifications, or lack thereof, of Mr. Dawson. I ultimately voted for his confirmation, but I did so after having a lengthy conversation with him this morning in which he gave me a personal commitment that he fervently and strongly believed in the protection of the wetlands and believed in the most expansive interpretation of the law that could be applied under current court decisions.

I have gotten to know him over the past few months. He has been extremely helpful and accommodating in the two or three instances where I

have called him. It was in light of my conversation with him this morning, in which he professed his steadfast determination to protect all the wetlands possible under his jurisdiction, that caused me to vote affirmatively on his nomination. I believe he is a man of integrity and I believe he will honor that commitment.

I yield the floor.

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Ross O. Swimmer, to be an Assistant Secretary of the Interior.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, and I do not intend to object. As I understand it, the majority leader asked unanimous consent to go into morning session.

Mr. DOLE. Executive session.

Mr. METZENBAUM. We were in morning session, is that it?

Mr. DOLE. Yes.

Mr. METZENBAUM. I have no objection.

Mr. President, I do have a parliamentary inquiry. That would not affect the pending business when the executive session is concluded, is that correct?

The PRESIDING OFFICER. The pending business is the nomination.

Mr. METZENBAUM. But my question is, when we go back to legislative session, that will not affect the pending business on the Legislative Calendar at that point?

The PRESIDING OFFICER. The Senator is correct.

Mr. METZENBAUM. I thank the Chair.

DEPARTMENT OF THE INTERIOR

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read as follows:

Ross O. Swimmer, of Oklahoma, to be an Assistant Secretary of the Interior.

The PRESIDING OFFICER. Is there further debate on the nomination?

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. BYRD. Mr. President, I have no problem with this on our side. We can get unanimous consent, as far as I am concerned.

Mr. President, we might take a moment in which to check on the telephone with a Senator.

I yield the floor.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is, will the Senate advise and consent to the nomination of Ross O. Swimmer, of Oklahoma, to be an Assistant Secretary of the Interior?

The nomination was confirmed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I want to thank the distinguished minority leader, Senator BIDEN, and Senator THURMOND for trying to work out a better process in considering nominations in the judiciary. Hopefully, that has been the case and perhaps we can clear the calendar of other judiciary nominations. I do thank the distinguished minority leader.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 12:45 P.M.

Mr. DOLE. Mr. President, I move that the Senate recess until 12:45 p.m.

The motion was agreed to and, at 12:06 p.m., the Senate recessed until 12:45; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KASTEN).

Mr. MCCLURE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF THE INTERIOR
AND RELATED AGENCIES AP-
PROPRIATIONS, 1986 (H.R. 3011)

Mr. McCLURE. Mr. President, parliamentary inquiry: What is the pending business?

AMENDMENT NO. 937

The PRESIDING OFFICER. The pending business is Amendment No. 937, offered by the Senator from Washington.

Mr. McCLURE. Mr. President, the Interior appropriations bill to which the amendment is the pending business has been a matter of on-again and off-again discussion on the floor of the Senate for some days. I have been asking for the opportunity to complete action on the appropriations bill.

But now it is very apparent that we will not be able to complete action on the appropriations bill prior to the action by the committee on the continuing resolution. So as a practical matter there is not anything that I can do to get the appropriations bill completed.

The distinguished chairman of the Appropriations Committee, the senior Senator from Oregon [Mr. HATFIELD], has scheduled a markup session on the continuing resolution to start at 10 o'clock tomorrow morning.

It is therefore obvious that all of the issues which are within the bounds of that bill, and will be presented for discussion and resolution by the Senate, will be revisited first in the committee tomorrow, and, then if the schedule holds up, early next week on the floor of the Senate for the continuing resolution.

Under those circumstances I see no purpose in taking either the Senate's time or the time of individual Members to try to dispose of the matters now pending before the Senate on the appropriations bill. It will be therefore my intention to offer a motion to table the appropriations bill.

I say that without making the motion because I know the distinguished Senator from Ohio is on the floor, and has an interest in the pending amendment and the underlying issue which deals with the Synthetic Fuels Corporation funding and activities.

I did not want to make the motion to table without having given the Senator from Ohio at least the preliminary notice that it was my intention to do so.

If the Senator would like me to yield for a question—I will not yield for any other purpose at this time—I will be happy to do that.

(Mr. HECHT assumed the chair.)

Mr. METZENBAUM. I do appreciate the courtesy of permitting me to ask a question. Do I understand that your intention is to make a motion to table an amendment on an appropriations bill without any debate whatsoever?

Mr. McCLURE. That is the understanding, yes.

Mr. METZENBAUM. Do I understand that you hold contrary to the leadership of the President of the United States, who, told House Republican leaders that by December 12 he wants Congress to approve legislation increasing the debt ceiling and requiring a balanced budget by 1991, and then that same President chastised the congressional leaders for giving final approval to two of the appropriations bills for 1986 and resorting to stopgap legislation to fund most of the Federal Government?

Do I understand that is notwithstanding the fact that a White House spokesman, Larry Speakes, said that the President was adamant about moving forward on the money bills, and went on to say that the Congress cannot or will not pass appropriations bills and once again is starting to fund the Federal Government by continuing resolutions, Reagan said, according to Speakes?

Do I understand that notwithstanding the fact that there have only been eight appropriations bills that have been completed—the energy and water development bill, the legislative bill, the Housing and Urban Development bill—and that there are pending on the calendar the Interior bill, this one, which was reported on September 24; the foreign assistance bill, reported on October 31; and the defense bill reported on November 6, and three other bills which are presently in conference—do I understand that the Senator is unwilling to permit us to bring to a vote this question of termination of the Synfuels Corporation, notwithstanding the fact that your motion to table the pending motion was defeated by a vote of 58 to 41?

Is it my understanding that with your motion to table you will not permit the Senate to express its view on the question of terminating the Synthetic Fuels Corporation after the House, by a vote of 312 to 111, indicated that they want to terminate the Synthetic Fuels Corporation?

It is hard for me to believe that under those circumstances the Senator from Idaho, a leader in the Senate, and who has been one of those who I assume was chastised by his own President, would now move to table his own bill and not give the Senate an opportunity to work its will.

When the chairman of the subcommittee responds, I would like to know if it would be his intent to put the Metzenbaum-Evans amendment concerning synthetic fuels on the continuing resolution, or, further, would the Senator from Idaho be willing to permit us to have an up or down vote on the synthetic fuels question before either moving to table or moving aside, so that the Senate's view, which I think was expressed quite adequately

in the original vote, might be expressed fully here and, therefore, eliminate needless debate subject to the time for the continuing resolution?

I know I have asked a number of questions of my colleague, but I was not certain whether he was going to give me more than one opportunity to ask questions.

Mr. McCLURE. I tried to follow the questions, and I think the answer is yes, no, no, yes, no, no.

[Laughter.]

Mr. METZENBAUM. I would like to know whether or not the Senator would be willing to permit the Senate to vote up-or-down on the synthetic fuels termination with the understanding, which I have previously advised the leader of, that I have no objection once that vote was taken to laying the bill aside or tabling, whatever.

Mr. McCLURE. I understand the Senator's question. Let me respond in complete candor.

I would have no objection to going ahead and taking up this bill if we had the prospect of being able to stay on it long enough to complete it and, therefore, avoid having to put it in the continuing resolution. But the fact is we do not have that opportunity either to complete the action in the Senate or complete the action in the Senate and go to conference and complete action on that bill in time to avoid folding it into the continuing resolution. So it is inevitable, under any circumstances, that the continuing resolution will have to bear the burden of the discussion and decisions on all these issues which may be presented in the Interior appropriations bill.

Under those circumstances, it is my intention to move to table without moving further on the bill and will confront each of those issues in the Appropriations Committee and on the floor when we get to the continuing resolution.

With respect to the form in which it will come, that will depend upon the actions taken in the Appropriations Committee, initially. As the Senator from Ohio knows, I and the distinguished Senator from Louisiana have circulated, together with others who signed the letter, a Dear Colleague letter that outlines a different process, a different procedure, and a compromise with respect to the Synthetic Fuels Corporation.

It would be my intention and expectation to have that matter considered in the context of the continuing resolution.

The distinguished chairman of the Appropriations Committee reminds me that the markup on the continuing resolution starts tomorrow morning at 10 o'clock in the Appropriations Committee.

Mr. METZENBAUM. Will the Senator yield for another question?

Mr. McCURE. I am happy to yield.

Mr. METZENBAUM. Would the distinguished chairman of the subcommittee be in a position to be willing to assure me that there would be no procedural objections while placing this issue squarely before the Senate on a continuing resolution? We are all familiar with the parliamentary rules. I do not believe that talking about \$6.5 billion is talking about an insignificant sum. The Senate has already expressed its view on the tabling motion. I think it would be a sad commentary—

Mr. McCURE. I do not want to mislead the Senator or anyone else. We will have a continuing resolution from the House of Representatives. Whatever action is taken with respect to this will probably be—probably, because we do not yet have the action by the House—a committee amendment dealing with this subject which would be in the continuing resolution when it is reported from the committee to the floor.

That was the case when this issue came up on the Interior appropriations bill, the pending bill. The Senator had the opportunity to offer an amendment. I assume, and I think it is probably correct to say, that the same situation would occur on the continuing resolution as has occurred on the Interior appropriation bill.

Mr. METZENBAUM. Can the Senator from Ohio get a reasonable assurance—no one can make an absolute assurance, of course—that both the manager of the bill as well as the chairman of the Committee on Appropriations would try to facilitate or not impede an opportunity for the Senate to express its position on this obviously very controversial issue?

Mr. McCURE. Mr. President, I think there is no way, even if I desired to do it, to avoid the Senate's expressing its will on this subject. I have no intention of trying to frustrate that opportunity.

I want to be very careful, though. I do not want to mislead the Senator from Ohio. I cannot tell him exactly what form that expression might come in, but I think there is no question that the Senator from Ohio has some control over how that question is presented, an opportunity to frame the way in which the question is presented.

I am not going to try nor do I think I would have the capacity to foreclose that opportunity of the Senator's. I am not going to come out here on the floor, if I get a committee amendment, and offer an amendment to the committee amendment in the first and second degrees and a motion to recommit in the first and second degrees and fill out all the branches of all possible

trees just in order to foreclose the Senator from Ohio. I tell him right now I do not intend to do that if that is what the Senator is concerned about.

Mr. METZENBAUM. No, Mr. President; I am particularly concerned about whether or not there might be some parliamentary question about whether it would be in order to offer our amendment.

Mr. McCURE. I do not think there is any parliamentary question. I do not know of any.

Mr. METZENBAUM. Would the Senator mind if I make an inquiry of the Parliamentarian to that effect?

Mr. McCURE. I would be happy to yield the floor without losing my right to it.

Mr. METZENBAUM. Mr. President, would the Chair through the Parliamentarian, be willing to provide the answer to whether or not, on a continuing resolution, an amendment to totally eliminate further funding for an agency such as the Synthetic Fuels Corporation would be in order?

The PRESIDING OFFICER. The amendment proposed by the Senator from Ohio is a rescission of funds and, under the precedents of the Senate, is legislation on an appropriations bill.

Mr. METZENBAUM. It would be legislation on an appropriations bill.

The PRESIDING OFFICER. The Senator is correct.

Mr. McCURE. I might say to the Senator I think we are in precisely the same condition on this bill and we have not asserted that issue. I think the same thing would be true with respect to the CR when, as, and if it is reported out of the Appropriations Committee on the floor again.

Mr. METZENBAUM. I have not attempted to take the floor and I recognize the Senator's right to the floor. I want to say we are not in that position at this moment on this bill because there is language in the appropriations bill—

Mr. McCURE. Which, I say to the Senator, I think will be precisely the case when we come up with the continuing resolution.

I cannot foretell all possible circumstances that might evolve through committee action. I am only making a guess as to what the committee action would be. Let me tell the Senator from Ohio, he knows and I know that this issue is an issue that needs to be resolved by the Senate of the United States and in conference with the House. I suspect it will have to be settled in that manner. I do not intend to try to frustrate that. I cannot speak for 98 other Members, but I can tell him what my view is. It certainly is not my intention—I may try to create the situation which is most favorable to my point of view in terms of the outcome of the vote, but I am not

trying to avoid a vote with respect to the issue.

Mr. METZENBAUM. Mr. President, I appreciate the attitude of the Senator from Idaho, but my question is, Would the Senator from Idaho consider offering his compromise as an amendment with extremely limited time and, if that failed, then give us an opportunity to go forward with our amendment with extremely limited time in order that the Senate's will may be absolutely expressed on this issue?

Mr. McCURE. Mr. President, once again, as I stated at the outset, I shall be perfectly pleased to go ahead with this bill, take whatever votes are necessary, if we had any prospect at all of getting to a final conclusion of the bill and therefore a means by which the issue is resolved. My own judgment and the judgment of the chairman of the Appropriations Committee is that we have no such prospect. Because we do not have that prospect and this issue cannot be finally settled in this bill, it will again be revisited in the continuing resolution, which begins its process in this body, in the committee, tomorrow. It is our expectation, I believe, that the continuing resolution will be before the Senate early next week.

Under those circumstances, there is not any way we can finally resolve this issue before we have to discuss on the floor and amend on the floor the continuing resolution. Therefore, there is no point in trying to do it twice in just a few days. Therefore, it is my intention to move to table this bill and confront and resolve that issue in the context of consideration of passage of the continuing resolution.

Mr. METZENBAUM. There is no way I can preclude the Senator from doing that which is his right, but on behalf of the President of the United States and myself, I want him to know that we are very, very upset at his unwillingness to go forward to send the President more appropriations bills. I shall not do that which the President has done; I am not going to chastise him, but I indicate my strong sense of disappointment that the Senate—I do not believe it has much on its platter at the moment and we are awaiting action, so I actually believe we could work and pass this appropriations bill if we just set our mind to do it. Instead, we are going to recess and my guess is we are not going to do anything else of really great importance this afternoon. I do not believe there is anything pushing behind it that causes us to turn aside the appropriations bill.

Mr. McCURE. Mr. President, I am sure the President of the United States appreciates the Senator's assistance—

Mr. METZENBAUM. I expect a call.

Mr. McCURE [continuing]. As unexpected as it is. But I also have to say in candor that various Senators have identified 35 amendments which they intend to offer with respect to the pending bill on different subjects.

Last night, I think there were 117 amendments filed on OCS, all of which could be called up with respect to the pending bill. They are prefilled amendments to the pending bill. It is in the face of that absolute assurance that we will have a lot of amendments that I have to say to my friend I know that we cannot dispose of the bill today no matter what my will might be, no matter how the Senate might feel about it. I just know, having brought this bill to the floor before, that it is going to take longer than that.

Mr. METZENBAUM. To paraphrase a famous American, it amazes me that the Congress cannot or will not pass appropriations bills and once again is starting to fund the Federal Government by continuing resolution.

Mr. McCURE. I suspect we should not explore the reasons why the Senate has not gotten to it earlier this year or why its legislative schedule gets slowed down from time to time for various reasons or by various Members for whatever reason. But we are and I cannot change that. I hope we are going to be out of here by the end of next week. My reservations are not until December 20, so I have more time than some who have earlier reservations. I am quite willing to stay until the work is completed.

MOTION TO TABLE H.R. 3011

Mr. President, I move to table the pending bill.

The PRESIDING OFFICER. The question is on agreeing to the motion. Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk resumed the call of the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GARN). Without objection, it is so ordered.

The question is on agreeing to the motion to table the bill.

The motion was agreed to.

Mr. McCURE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. EVANS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCURE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

(During the quorum call the chair was occupied by Mr. GARN and Mr. STAFFORD.)

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. D'AMATO). Without objection, it is so ordered.

SCHEDULE

Mr. DOLE. Mr. President, I know that many of my colleagues are wondering what is happening and what is not happening. Obviously, not much is happening.

In any event, we have just had a meeting in my office on the sports franchise bill, S. 259, with a number of Senators. It is our hope that we can reach some agreement on that bill this afternoon—maybe not dispose of it, but at least lay down the bill and discuss it.

We are also waiting for a letter on S. 1396, White Earth Indian Reservation. We have asked the Justice Department to deliver the letter by 1 p.m. It is now nearly 3 p.m. I understand that the letter has been drafted and has been floating around there for a couple of days. We would like to have it today, so that we can take up that bill and dispose of it in about 90 minutes.

We have also had a meeting on the processing of judicial nominations. We are close to an agreement among members of the Judiciary Committee and the leadership. It is hoped that this will permit us to move forward on additional nominations on the calendar, and take up eight or nine more that will be reported on tomorrow.

It is still uncertain whether a cloture motion will be filed on the Conrail legislation today or sometime this week. I assume that it will not be possible to obtain consent to proceed to the consideration of that particular measure, so the cloture motion will be on the motion to proceed.

We are still trying to negotiate the Genocide Convention, and there are two versions of the constitutional amendment to balance the budget.

It is hoped that on Friday we will be able to take up the continuing resolution which passed the House today by the narrow margin of 212 to 208, which indicates that there is some problem with it. I am advised by the chairman of the Appropriations Com-

mittee that he would like to complete the markup tomorrow and start that bill on Friday. He thinks it will take 3 full days.

So I believe there is still some hope for adjournment by the 13th, which is a Friday. Prior to that time we have a number of major issues that will be in conference, including the farm bill, the farm credit bill, the debt ceiling, reconciliation, and the continuing resolution.

The PRESIDING OFFICER. Is it permissible for the Chair to ask the majority leader to restate his intention on adjournment on a particular date, such as the 13th?

Mr. DOLE. It is our hope, and it is even our intention, but it may not happen. I think the one big question we cannot answer on this side would be what the House will do on the tax bill. I have been informed in the last 30 minutes that the House may not even get a rule until next week on the tax reform bill. If that is the case, it might not come up until the following week, which would mean that we probably would be in session until the 18th, 19th, 20th, or 21st.

Mr. President, unless anyone has anything I have not thought of that we might bring up, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESIGNATION OF ROBERT MCFARLANE

Mr. DOLE. Mr. President, I want to take 1 minute to extend my best wishes for a successful future to Robert C. McFarlane, who has announced that he will resign from his current post as National Security Adviser to the President. I understand that the resignation has just been accepted.

Bud McFarlane has been an outstanding public servant throughout his long career, both in the military and civil service.

During my tenure as majority leader, he has proven time and again to be an extremely effective liaison between the administration and Congress on critical national security issues.

Bud spent many hours in my office this past year, helping to work out compromises—acceptable to both the administration and the Senate—on aid to Nicaragua, South African anti-apartheid legislation, Jordan arms sales, and the MX missile, among others.

In each of these cases, Bud provided invaluable input, voicing a commitment to preserving our Nation's security, but doing so with reason. As a result of the pivotal role he played, Bud McFarlane has justly earned the highest respect from Members of Congress, Democrats and Republicans alike.

I know, Mr. President, that my colleagues here in the Senate will join me in offering our thanks to Bud for his enormous contribution to this country, and especially for the time, effort, and concern he committed to working with those of us on Capitol Hill. Largely because of his efforts, I believe we have been able to make major and sensitive policy decisions this year that will both ensure our national security and preserve peace.

Mr. President, as I said at the outset, I want to wish Bud well, in all his future endeavors.

Let me also take this opportunity to extend my congratulations to John M. Pointdexter, whom President Reagan has appointed to succeed Bud McFarlane. I hope, I trust, that we will continue the fine relationship with the National Security Council, and I look forward to working with Mr. Pointdexter in the coming months.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. DOLE. Mr. President, let me indicate to my colleagues that there will be no more rollcall votes today. I am going to ask that we stand in recess because of the ceremony outside the Chamber, the unveiling of the bust of former President Gerald R. Ford. That will take place at 5 o'clock. I think we should be in recess until about 5:45. At that time, it is my hope that we can lay down the sports franchise bill, S. 259, and if not, S. 1398, which will be pending tomorrow morning.

RECESS UNTIL 5:45 P.M.

Mr. DOLE. Mr. President, as I have indicated, there will be no more rollcall votes this evening. I move the Senate stand in recess until 5:45 p.m.

The motion was agreed to and, at 4:47 p.m., the Senate recessed until 5:45 p.m. Whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. BOSCHWITZ].

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE U.S.-JAPAN COOPERATIVE MEDICAL SCIENCE PROGRAM—MESSAGE FROM THE PRESIDENT—PM 97

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with Section 5(h) of the International Health Research Act of 1960 (P.L. 86-610), I transmit herewith the Eighteenth Annual Report of the U.S.-Japan Cooperative Medical Science Program for Calendar Year 1984.

RONALD REAGAN.

THE WHITE HOUSE, December 4, 1985.

MESSAGES FROM THE HOUSE

At 12:15 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 7) to extend and improve the National School Lunch Act and the Child Nutrition Act of 1966; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. HAWKINS, Mr. FORD of Michigan, Mr. KILDEE, Mr. WILLIAMS, Mr. MARTINEZ, Mr. OWENS, Mr. BOUCHER, Mr. PERKINS, Mr. JEFFORDS, Mr. GOODLING, Mr. CHANDLER, Mr. McKERNAN, and Mr. FAWELL as managers of the conference on the part of the House.

The message also announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 377. Joint resolution to designate December 5, 1985, as "Walt Disney Recognition Day," and

H.J. Res. 440. Joint resolution to designate the week of December 1, 1985, through December 7, 1985, as "National Autism Week."

ENROLLED BILL SIGNED

At 2:19 p.m., a message from the House of Representatives, delivered by Mr. Barry, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 1562. An Act to achieve the objectives of the Multi-Fiber Arrangement and to promote the economic recovery of the United States textile and apparel industry and its workers.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

At 3:50 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the amendment of the House to the text of the bill (S. 1264) to amend the National Foundation on the Arts and Humanities Act of 1965, the Museum Services Act, and the Arts and Crafts Indemnity Act, to extend the authorization of appropriations for such acts, and for other purposes.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 3067) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1986, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DIXON, Mr. NATCHER, Mr. STOKES, Mr. WILSON, Mr. SABO, Mr. HOYER, Mr. WHITTEN, Mr. COUGHLIN, Mr. GREEN, Mr. WOLF, and Mr. CONTE as managers of the conference on the part of the House.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 739. An act relating to the documentation of the vessel *Marilyn* to be employed in the coastwise trade;

H.R. 2316. An act for the relief of Paulette Mendez-Silva; and

H.J. Res. 465. Joint resolution making further continuing appropriations for the fiscal year 1986, and for other purposes.

MEASURES REFERRED

The following bills and joint resolution were read the first and second times by unanimous consent, and referred as indicated:

H.R. 739. An Act relating to the documentation of the vessel *Marilyn* to be employed in the coastwise trade; to the Committee on Commerce, Science, and Transportation.

H.R. 2316. An Act for the relief of Paulette Mendez-Silva; to the Committee on the Judiciary.

H.J. Res. 465. Joint resolution making further continuing appropriations for the fiscal

year 1986, and for other purposes; to the Committee on Appropriations.

MEASURES HELD AT THE DESK

The following joint resolution was ordered held at the desk by unanimous consent:

H.J. Res. 440. Joint resolution to designate the week of December 1, 1985, through December 7, 1985, as "National Autism Week".

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2083. A communication from the Administrator of the Veterans' Administration transmitting, pursuant to law, a report on a waiver of certain conditions regarding VA technology transfer functions; to the Committee on Commerce, Science, and Transportation.

EC-2084. A communication from the Acting Director of the Defense Mapping Agency transmitting, pursuant to law, a copy of a lease prospectus; to the Committee on Environment and Public Works.

EC-2085. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State transmitting, pursuant to law, copies of international agreements, other than treaties, entered into by the United States within the sixty days previous to December 2, 1985; to the Committee on Foreign Relations.

EC-2086. A communication from the Attorney General of the United States transmitting, pursuant to law, a report on a decision by the Solicitor General not to appeal a decision of the U.S. District Court of Ohio to the Supreme Court; to the Committee on Governmental Affairs.

EC-2087. A communication from the National President of the Women's Army Corps Veterans Association transmitting, pursuant to law, the Association's annual audit report; to the Committee on the Judiciary.

EC-2088. A communication from the Assistant Attorney General transmitting a draft of proposed legislation to upgrade and professionalize the U.S. Marshals Service; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on Labor and Human Resources, with amendments:

S. 1181. A bill to establish a program for the provision of home and community based services to elderly individuals (Rept. 99-208).

By Mr. HATCH, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 1574. A bill to provide for public education concerning the health consequences of using smokeless tobacco products (Rept. 99-209).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

Russell A. Rourke, of Maryland, to be Secretary of the Air Force.

(The above nomination was reported from the Committee on Armed Services with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. LUGAR, from the Committee on Foreign Relations:

Joseph Ghougassian, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the State of Qatar.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Joseph Ghougassian.
Post: Ambassador to the State of Qatar.

Contributions, amount, date, and donee:
1. Self: \$100, 1981, Cal Rep. Party; \$75, 1982, John McClaughry Sen. Cpn; \$100, \$250, \$100, 1983/84/85, RNC/RNC/RNC.

2. Spouse: Zena Ghougassian, \$30, 1984, Rep. Abroad.

3. Children and spouses names: Yasmine, Samara, Jihan, none.

4. Parents names: Antoine (deceased), Marie-Antoinette, none.

5. Grandparents names: Hagop and Hovassana Ghougassian (deceased), none.

6. Brothers and spouses names: Jean and Colette, Gougass and Mona, Raymond and Lucie, none.

7. Sisters and spouses names: Mary and Michel Noujem, none.

Gregory J. Newell, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Sweden.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Gregory John Newell.
Post: U.S. Ambassador to Sweden.

Contributions, amount, date, and donee:
1. Self: Gregory J. Newell, none.

2. Spouse: Candilynne, none.

3. Children and spouses names: David, Kendall, Catherine, Michael, none.

4. Parents names: Eugene Newell and Ima Newell none.

5. Grandparents names: Betty Stamper (others deceased), none.

6. Brothers and spouses names: James and Jennifer, Imogene Newell, none, Eugene and Carla Newell, none; Marty and Mary Newell, none.

Charles Roger Carlisle, of Vermont, for the rank of Ambassador during his tenure of service as United States Negotiator on Textile Matters.

¹ In 1982 I may have contributed no more than \$250 toward the gubernatorial campaign of George Dukmejian, Governor of the State of California. Also, FYI, as a member of the Pres. Club (1984), in RNC, I have pledged to pay \$1,000 as dues for membership, of which \$350 has been paid.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Charles Roger Carlisle.
POST: Chief textile negotiator with the rank of Ambassador.

Contributions, amount, date, and donee:

1. Self: June 3, 1981, St. Joe Minerals PAC, \$500; October 1, 1981, St. Joe Minerals PAC, \$500; January 26, 1982, St. Joe Minerals PAC, \$600; March 27, 1984, Reelect Campbell to Congress Committee, \$250.

2. Spouse: None.

3. Children and spouses names: daughter: Leslie Anne Carnevale, husband: Charles C. Carnevale II, son: John H. Carlisle, none.

4. Parents names: mother: Mrs. William, father: Mietenkoetter, Charles B. Carlisle \$15, 1982, Ronald Reagan.

5. Grandparents names: John H. Carlisle and Winifred Burch Carlisle, William Williams and Nell Culbertson Williams, (both deceased).

6. Brothers and spouses names: William L. Carlisle, wife: Shirley Carlisle, none.

7. Sisters and spouses names: none.

Laurence William Lane, Jr., of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Australia and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Nauru.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Laurence William Lane, Jr.
Post: Ambassador to Australia (Chief of Mission).

Contributions, amount, date and donee:
1. Self: Laurence William Lane, Jr. (1981-85):

J. Brady Presidential Fund, \$200.
California for Republic, \$200.

California Republican Party, \$1,060, \$1,100, \$1,000.

Citizens for America, \$5,000
Conolly Campaign Debt, \$25.

Sue Crane for Council, \$25.
Alan Cranston for President, \$500.

Cranston for Senate, \$600.
Deukmejian Campaign Committee, \$300.

Committee to Re-elect Dianne Feinstein, \$500.

S.F. for Responsible Election, \$500.
Garamendi Committee, \$500.

Friends of Marz Garcia, \$100.
Committee to elect Britta Harris, \$500.

Helms for Senate Committee, \$100.
Committee for reelect. J. Heinz, \$100.

Independent Action/Udall 1984, \$300.
The Lincoln Club, \$1,000, \$1,000.

Californians for Pete McCloskey, \$1,000, \$1,000.

Milton Marks for State Senate, \$500.
Becky Morgan for State Senate, \$500.

National Congressional Club, \$100.
Friends of Naylor, \$100, \$100, \$750.

Pacileo for Sheriff Campaign, \$100.
C. Percy Election Committee, \$1,000, \$3,000.

The Presidential Trust, \$10,000.
Reagan-Bush 1984, \$500.

Republican Eagles, \$11,850, \$10,000.
Republican National Committee, \$450,

\$1,000, \$2,750, \$1,250.

Republican Party of San Mateo County, \$150.

Elliot Richardson for Senate Committee, \$500.

Wilson Riles, Superintendent of Schools, \$300, \$200, \$100.

United S.F. Republican Finance Committee, \$1,000, \$200, \$100.

Secretary of State Bicentennial, Signing, Treaty of Paris, \$3,800.

Joan Siff—Supervisor, \$25.

Stop Peripheral Canal, \$100.

Pete Wilson for Senate, \$100, \$2,000.

Citizens for the Republic, \$700, \$200, \$100.

California for Balanced Federal Budget Committee, \$1,000.

California Against State Crime and Weapons, \$25.

Total, \$4,435, \$8,075, \$11,700, \$30,650, \$16,100.

2. Spouse: Donna Jean Gimbel Lane (1981-85):

1981:

McCloskey for Senator, \$1,000.

Don Edwards Congressional Campaign, \$50.

Bill McColl for Congress Committee \$200. Total \$1,250.

1982:

Bill Royer for Congress, \$300.

Congressman Les AuCoin, \$100.

Philip Burton for Congress, \$500.

Ed Zschau for Congress Committee, \$200.

Bob Stafford Volunteers/Campaign for Senator, \$100.

Don Edwards Congressional Campaign Fund, \$50.

Norman Mineta for Congress, \$50.

Total \$1,300.

1983:

Congressman Pete Stark Re-election Committee \$100.

Norman Mineta for Congress, \$50.

Total \$150.

Subtotal 1981-83, \$2,700.

1984:

Ed Zschau for Congress, \$200.

Don Edwards Congressional Campaign Fund, \$100.

Chuck Percy Senate Club, \$250.

Fazio for Congress, \$250.

Ed Zschau for Congress, \$250.

Mineta for Congress, \$100.

Don Edwards Congressional Campaign Fund, \$100.

Total 1984, \$1,100.

1985:

John Chafee, Committee to Re-elect to Senate (RI), \$250.

Pete McCloskey, Friends of, \$250.

Sala Burton for Congress Campaign Committee (1 dinner ticket), \$200.

YTD 1985 total, \$700.

Subtotal 1984+YTD 1985, \$1,800.

Subtotal 1981-83, \$2,700.

1981-YTD 1985 total, \$4,500.

3. Children and spouses names: Sharon Louise Lane, Robert Laurence Lane, Brenda Ruth Lane, Wendi Hunter Lane, none.

4. Parents names: L.W. Lane, father, deceased (1967), Ruth B. Lane, mother, deceased (1980).

5. Grandparents names: Hill McClelland Bell, Edith Orebaugh (deceased), William Lane, Estelle Hill (deceased).

6. Brothers and spouses names: Melvin B. and Joan Lane, (see amounts above for 1981-85).

Paul Matthews Cleveland, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to New Zealand.

Contributions are to be reported for the period beginning on the first day of the

fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Paul Matthews Cleveland.

Post: American Embassy Wellington.

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and spouses names: None.

4. Parent names: None.

5. Grandparents names: None.

6. Brothers and spouses names: None.

7. Sisters and spouses names: None.

Donald A. Bouchard, of Maine, to be an

Assistant Secretary of State; and

Jose Manuel Casanova, of Florida, to be U.S. Executive Director of the Inter-American Development Bank for a term of 3 years.

(The above nominations were reported from the Committee on Foreign Relations with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. LUGAR. Mr. President, for the Committee on Foreign Relation, I also report favorably two Foreign Service lists which appeared in their entirety in the CONGRESSIONAL RECORD of October 28, 1985, and, to save the expense of reprinting them on the Executive Calendar, I ask unanimous consent that they lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. D'AMATO (for himself and Mr. THURMOND):

S. 1894. A bill entitled the "Armed Drug Trafficking Act," to the Committee on the Judiciary.

By Mr. THURMOND (for himself and Mr. HOLLINGS):

S. 1895. A bill for the relief of Marlboro County General Hospital Charity, of Bennettsville, SC; to the Committee on Labor and Human Resources.

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 1896. A bill to designate the General Services Administration building known as the "U.S. Appraiser's Stores Building" in Boston, MA, as the "Captain John Foster Williams Coast Guard Building;" to the Committee on Environment and Public Works.

By Mr. DOLE:

S.J. Res. 241. Joint resolution designating the week beginning on May 11, 1986, as "National Asthma and Allergy Awareness Week;" to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for Mr. DANFORTH (for himself, Mrs. KASSEBAUM, Mr. CRANSTON, Mr. WILSON, Mrs. HAWKINS and Mr. EAGLETON):

S. Res. 264. Resolution to commend the creation and production of the DC-3 transport aircraft; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. D'AMATO (for himself and Mr. THURMOND):

S. 1894. A bill entitled the "Armed Drug Trafficking Act"; to the Committee on the Judiciary.

ARMED DRUG TRAFFICKING ACT

● Mr. D'AMATO. Mr. President, I rise today to introduce the Armed Drug Trafficking Act. I am very pleased that the distinguished chairman of the Senate Committee on the Judiciary, Senator THURMOND, is an original cosponsor of this legislation.

This bill imposes strict mandatory penalties—with no possibility of parole—on criminals who use or carry firearms in the course of drug trafficking and other serious drug crimes.

Last year, as part of the Comprehensive Crime Control Act, Congress provided for a minimum 5-year prison sentence for a person who uses or carries a firearm during, and in relation to, a Federal crime of violence. This sentence is to run consecutively with the sentence for the underlying violent crime or for any other offense. In the case of a criminal's subsequent conviction, the new law prohibits all probationary and suspended sentences.

The bill I am introducing today applies these same strict sentencing rules to narcotics traffickers who carry firearms in the course of committing such crimes.

The need for this bill was demonstrated very dramatically on November 21, when the U.S. Court for the Second Circuit, in *U.S. v. Diaz*, 85-1276, specifically stated that the new mandatory 5-year provision does not apply to narcotics offenses.

In this case, the defendant possessed five fully loaded pistols in an apartment out of which he operated an illegal narcotics distribution business.

After a jury trial in Federal District Court, the defendant, Julio Diaz, was found guilty of four crimes: conspiracy to distribute narcotics; possession with intent to distribute cocaine; receipt of a firearm in interstate commerce by a person previously convicted of a felony; and carrying or using a firearm in the commission of a crime of violence.

On the question of whether narcotics trafficking is a crime of violence, the district court ruled for the Government. It reasoned that the new law applies to narcotics offenses because firearms are "tools of the narcotics trade" and because drug offenses in-

volve a "substantial risk that physical force may be used" when they are committed.

Unfortunately, the appeals court did not agree. It specifically stated that drug trafficking is not a violent crime for the purposes of 18 U.S.C. 924(c).

The Armed Drug Trafficking Act will close the loophole that the Diaz case has revealed.

The need to amend section 924(c) is underscored by the sentences that the defendant received in the Diaz case. The defendant was sentenced to concurrent 4-year sentences on the first three offenses of which he was found guilty. In effect, he was able to commit "three crimes for the price of one". It was only for the violation of section 924(c) that he could have received a mandatory sentence without possibility of parole.

In the Diaz opinion, the Federal Appeals Court says:

If felonies involving the sale and distribution of narcotics are to be deemed crimes of violence for the purpose of Section 924(c), we believe that this should be done by Congress amending the Comprehensive Crime Control Act."

Mr. President, the Congress should amend the Comprehensive Control Act. I urge my colleagues to cosponsor and support the Armed Drug Trafficking Act to guarantee that we treat armed drug trafficking as seriously as we do other armed felonies threatening public safety. The court in Diaz has made it very clear that the next step is up to Congress. If armed drug trafficking is to be treated as seriously as it should be, then Congress must say so.

I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1894

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

SECTION 1. Subsection (c) of section 924 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to any" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 855a), or any";

(2) adding after the words "in addition to the punishment provided for such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the" the words "felony or".

By Mr. THURMOND (for himself and Mr. HOLLINGS):

S. 1895. A bill for the relief of Marlboro County General Hospital Charity, of Bennettsville, SC; to the Committee on Labor and Human Resources.

RELIEF OF MARLBORO COUNTY GENERAL HOSPITAL CHARITY

Mr. THURMOND. Mr. President, I rise today to introduce, together with my distinguished colleague, Senator HOLLINGS, legislation which would provide equitable relief to the Marlboro County General Hospital Charity [MCGHC]. The purpose of this bill is to allow this charitable trust the opportunity to continue providing indigent health care to the citizens of one of the five most economically depressed counties in my State. According to recent statistics compiled by the South Carolina Development Board, the unemployment rate in Marlboro County ranges from 15 to 19 percent, and is the highest in the State. Depending on the month, it has either the lowest or next to the lowest per capita income of the 46 South Carolina counties.

Prior to its sale, Marlboro County General Hospital, Inc.—Marlboro General—a nonprofit corporation, provided health care services to poor citizens of Marlboro County. This corporation had received Hill-Burton construction funds in 1962 and 1968. Although the Federal Government no longer makes funds available through this program, Hill-Burton hospitals like Marlboro General remain subject to certain obligations. In exchange for the Hill-Burton construction funds, these hospitals promised to provide a reasonable volume of services to persons unable to pay. This is commonly known as the free care assurance. These hospitals also agreed to make their services available to all persons in their geographic areas. This is known as the community service assurance. For individuals who have no private health insurance and who do not qualify for Medicare or Medicaid, these guaranteed health services are an invaluable resource.

The obligation of Hill-Burton hospitals to provide free health care extends for a period of 20 years from the date the federally assisted project opened for service. If the Hill-Burton hospital is sold within this 20-year period to an entity which would not have been originally entitled to Hill-Burton funds—a for-profit corporation—then the Government can recover a percentage of the funds distributed based on a statutory formula. Current law provides that the recovery of these funds may be waived if the purchaser of the Hill-Burton hospital agrees to establish an irrevocable trust in twice the amount of money owed the Government. These trust funds must be used to provide indigent health care for area residents. The purchaser is the only party to the sale that may apply for such a waiver. However, there is no obligation for the purchaser to do so. Conversely, the seller may not apply even if it is will-

ing to comply with the waiver provisions.

Marlboro County General Hospital Charity is a trust which was established from the proceeds of the sale of Marlboro General to the Hospital Corporation of America [HCA]. In the sale agreement HCA agreed not to turn away indigents. MCGHC agreed to pay for indigent health care with these trust funds. The Department of Health and Human Services maintains that this sale occurred within the 20-year period. Since HCA has refused to apply for a waiver, and would not have been entitled to Hill-Burton funds, the Department is seeking a recovery against Marlboro County General Hospital Charity of an undetermined amount between \$350,000 and \$500,000.

Mr. President, Marlboro County General Hospital Charity deserves the relief this bill would provide because it is in total compliance with the basic policy behind the Hill-Burton waiver provisions. The trust has always provided funds for indigent health care services to deserving Marlboro County citizens. The trustees have always been willing to establish this trust in total compliance with the Hill-Burton waiver provisions. However, because they are the sellers and not the purchasers of the hospital, current law prohibits them from obtaining a waiver. Without the relief this bill provides, MCGHC will be forced to return funds which have been and continue to be used for their originally intended purposes. This technical anomaly is clearly an extremely inequitable case of form prevailing over substance.

This bill mandates that the MCGHC indigent health care trust be established in compliance with current law. It requires MCGHC to enter into an agreement with the Department of Health and Human Services whereby the trustees ensure future compliance with the free health care provisions. Relief from all liability is contingent on such compliance. Furthermore, the agreement with the Department would provide penalties for any non-compliance by MCGHC.

In this bill, the interests of the Government are adequately served by ensuring that these funds are only used for indigent health care services. The interests of the many area citizens who are poor and/or unemployed, but still are ineligible for Medicare and Medicaid, are protected in that they will not be turned away from receiving the health care services provided by this hospital. Because this legislation equitably addresses these interests, I urge its expedient passage.

By Mr. DOLE:

S.J. Res. 241. Joint resolution designating the week beginning on May 11, 1986, as "National Asthma and Allergy

Awareness Week"; to the Committee on the Judiciary.

NATIONAL ASTHMA AND ALLERGY AWARENESS WEEK

Mr. DOLE, Mr. President, today I introduce a joint resolution requesting the President to designate the week beginning on May 11, 1986, as "National Asthma and Allergy Awareness Week."

Allergies and asthma together represent an enormous public health problem. Here are the facts:

One of every six American children and adults is afflicted in some way by these illnesses.

An estimated 5,000 individuals die each year from asthma, despite common medical knowledge and treatments capable of preventing such deaths.

As many as 9 million Americans are asthmatic, over a third of whom are children.

Hay fever afflicts an estimated 15 million Americans.

About 8 million workdays a year are lost due to hay fever and asthma.

About 130 million schooldays are missed each year because of asthma and hay fever.

Occupational allergic diseases are now believed to be a major cause of workplace-caused illness.

An estimated 16 percent of all hospital inpatients suffer from adverse drug reactions, often allergic in nature.

Many other ailments of the skin, joints, kidneys, lungs, intestines, glands; as well as some parasitic, blood, infectious and malignant disorders are now believed to have major allergic and immunologic components.

The costs to individuals and families, employers, the health delivery system, and society of asthma and allergic diseases are enormous. For example:

The total cost of these incurable immunologic diseases was estimated at over \$4 billion annually.

Direct costs for physicians services, drugs, and hospital or nursing home care are estimated to be close to \$2 billion a year.

Indirect costs, such as lost wages, probably exceed \$800 million a year for hay fever and asthma alone.

Social Security benefits for \$400 million were allowed in 1 recent year to workers disabled by asthma.

To emphasize the importance of public education and awareness and to encourage the continued public and private support of research, I urge my colleagues to join me in support of this joint resolution.

ADDITIONAL COSPONSORS

S. 7

At the request of Mr. CRANSTON, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 7, a bill to amend title XIX of the Social Security Act to

provide Medicaid coverage for certain low-income pregnant women.

S. 402

At the request of Mr. PRESSLER, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 402, a bill to amend the Communications Act of 1934 to provide for specialized equipment for telephone service to certain disabled persons.

S. 625

At the request of Mrs. HAWKINS, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 625, a bill to include the offenses relating to sexual exploitation of children under the provisions of RICO and authorize civil suits on behalf of victims of child pornography and prostitution.

S. 707

At the request of Mr. SIMON, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 707, a bill to amend title 38, United States Code, to provide disability and death allowances, compensation, health care, and other benefits to veterans and the survivors of veterans who participated in atomic tests or the occupation of Hiroshima and Nagasaki and suffer from diseases that may be attributable to ionizing radiation.

S. 1571

At the request of Mr. BRADLEY, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1571, a bill to stabilize international currency markets in support of fair global competition.

S. 1648

At the request of Mr. HEINZ, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 1648, a bill to amend title XVIII of the Social Security Act to make permanent the hospice benefit, to increase the payment amount for hospice care, and to make hospice care an optional service under the Medicaid Program.

S. 1756

At the request of Mr. SIMON, the names of the Senator from Michigan [Mr. LEVIN], and the Senator from Vermont [Mr. LEAHY] were added as cosponsors of S. 1756, a bill to authorize the President to present to Sargent Shriver, on behalf of the Congress, a specially struck medal.

S. 1798

At the request of Mr. BRADLEY, the name of the Senator from Maryland [Mr. MATHIAS] was added as a cosponsor of S. 1798, a bill to grant the consent of the Senate to the Northeast Interstate Low-Level Radioactive Waste Management Compact.

SENATE JOINT RESOLUTION 179

At the request of Mr. KENNEDY, the names of the Senator from Arizona

[Mr. DECONCINI], and the Senator from Colorado [Mr. HART] were added as cosponsors of Senate Joint Resolution 179, a joint resolution requesting the President of the United States to resume negotiations with the Soviet Union for a verifiable comprehensive test ban treaty.

SENATE JOINT RESOLUTION 188

At the request of Mrs. KASSEBAUM, the name of the Senator from Arizona [Mr. GOLDWATER] was added as a cosponsor of Senate Joint Resolution 188, a joint resolution to designate July 6, 1986, as "National Air Traffic Control Day".

SENATE JOINT RESOLUTION 230

At the request of Mr. KERRY, the names of the Senator from South Dakota [Mr. PRESSLER], the Senator from Utah [Mr. HATCH], the Senator from Georgia [Mr. NUNN], the Senator from Nebraska [Mr. EXON], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of Senate Joint Resolution 230, a joint resolution to designate the week of December 1, 1985, through December 7, 1985, as "National Autism Week."

SENATE JOINT RESOLUTION 231

At the request of Mr. RIEGLE, the names of the Senator from Indiana [Mr. LUGAR], the Senator from Mississippi [Mr. STENNIS], the Senator from Indiana [Mr. QUAYLE], the Senator from Nebraska [Mr. ZORINSKY], the Senator from South Dakota [Mr. ABDNOR], the Senator from Georgia [Mr. NUNN], the Senator from Nevada [Mr. LAXALT], the Senator from North Dakota [Mr. BURDICK], the Senator from Georgia [Mr. MATTINGLY], the Senator from South Carolina [Mr. HOLLINGS], the Senator from North Carolina [Mr. EAST], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Alabama [Mr. HEFLIN], the Senator from Hawaii [Mr. INOUE], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of Senate Joint Resolution 231, a joint resolution to designate the period commencing January 1, 1986, and ending December 31, 1986, as the "Centennial Year of the Gasoline Powered Automobile."

SENATE JOINT RESOLUTION 235

At the request of Mr. DANFORTH, the names of the Senator from Kansas [Mr. DOLE], the Senator from Hawaii [Mr. INOUE], the Senator from Rhode Island [Mr. PELL], and the Senator from Georgia [Mr. NUNN] were added as cosponsors of Senate Joint Resolution 235, a joint resolution to designate the week of January 26, 1986, to February 1, 1986, as "Truck and Bus Safety Week".

SENATE CONCURRENT RESOLUTION 78

At the request of Mr. BRADLEY, the names of the Senator from South Carolina [Mr. HOLLINGS], and the Sen-

ator from Arizona [Mr. GOLDWATER] were added as cosponsors of Senate Concurrent Resolution 78, a concurrent resolution in support of universal access to immunization by 1990 and accelerated efforts to eradicate childhood diseases.

SENATE CONCURRENT RESOLUTION 81

At the request of Mr. SIMON, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of Senate Concurrent Resolution 81, a concurrent resolution requesting the President to begin talks with the Government of the Soviet Union to establish a United States-Soviet Union student exchange for peace program.

SENATE RESOLUTION 264—COMMENDING THE CREATION AND PRODUCTION OF THE DC-3 TRANSPORT AIRCRAFT

Mr. DOLE. (for Mr. DANFORTH, for himself, Mrs. KASSEBAUM, Mr. CRANSTON, Mr. WILSON, and Mrs. HAWKINS) submitted the following resolution; which was considered and agreed to:

S. RES. 264

Whereas an aviation legend began on December 17, 1935 when the Douglas Aircraft Company unveiled the DC-3 transport aircraft in Santa Monica, California;

Whereas the DC-3 transport aircraft, whose first flight was one hour and forty minutes in duration, has been utilized in civilian and military transportation in excess of 8,500,000 miles;

Whereas such aircraft's combination of speed, payload, range, economy and reliability revolutionized air travel throughout the world;

Whereas the Douglas Aircraft Company's production of 10,100 military versions (C-47) of such aircraft, at a peak rate of 1.8 aircraft per hour, made such aircraft the single most produced aircraft in the world, and resulted in such aircraft being named by General Dwight D. Eisenhower as one of the four weapons that most helped to secure the Allied victory in World War II; and

Whereas over 2,000 DC-3 transport aircraft are still in service around the world today; Now, therefore, be it

Resolved, That the Senate, on the Fiftieth Anniversary of service of the DC-3 transport aircraft, commends the McDonnell Douglas Aircraft Company for its leadership in creating and producing the aircraft that revolutionized the air transport industry.

AMENDMENTS SUBMITTED

CONRAIL SALE AMENDMENTS

SPECTER AMENDMENTS NOS. 1311 THROUGH 1315

(Ordered to lie on the table.)

Mr. SPECTER submitted five amendments intended to be proposed by him to the bill (S. 638) to amend the Regional Rail Reorganization Act of 1973 to provide for the transfer of ownership of the Consolidated Rail

Corporation to the private sector, and for other purposes; as follows:

AMENDMENT No. 1311

On page 11, beginning with line 25 delete the words "except concurrent with" and insert the words "prior to the date which is 90 days following"

AMENDMENT No. 1312

On page 9, line 2 insert the following new paragraph and renumber paragraph (7) through (20) as (8) through (21),

"(7) subsection (b) of this section, but only with respect to matters covered by the last sentence;"

AMENDMENT No. 1313

On page 12 following line 8 insert the following new paragraph:

"(7) Except pursuant to divestiture approved by the Attorney General in connection with the sale, Norfolk Southern shall not for a period of 10 years following the consummation of the sale, permit any transaction or series of transactions which would cause all or any substantial part of the railroad assets and business of Conrail and its subsidiaries to be sold, leased, transferred or otherwise disposed of other than to a subsidiary of Conrail in which neither Norfolk Southern or any of its non-Conrail affiliates or subsidiaries has any interest."

AMENDMENT No. 1314

On page 15 following line 8 insert the following new paragraphs:

"(7) Indebtedness incurred by Norfolk Southern Corporation or any member of its affiliated group to acquire or hold the common stock of Conrail shall be deemed to have been incurred by Conrail, and not such other corporation, for purposes of determining the person entitled to claim the interest expense deduction under Section 163 of the Internal Revenue Code of 1954.

"(8) Conrail shall not be treated as an includable corporation under Section 1504(b) of the Code for taxable years beginning before January 1, 1991."

AMENDMENT No. 1315

On page 12 following line 8 insert the following new paragraph:

"(7) For a period of five years following the consummation of the sale, Norfolk Southern shall furnish the Department of Transportation separate audited financial statements of Conrail, Norfolk Southern and the Conrail-Norfolk Southern Consolidated group within 90 days after the end of each fiscal year of each entity."

HEINZ AMENDMENTS NOS. 1316 THROUGH 1320

(Ordered to lie on the table.)

Mr. HEINZ submitted five amendments intended to be proposed by him to the bill S. 638, supra; as follows:

AMENDMENT No. 1316

Add to page 12 after line 8 new subsection (c) to Section 104;

Notwithstanding any other provision of this law, prior to transfer of the interest of the U.S. in the common stock of the Corporation to the Norfolk Southern Corporation, the Secretary, in consultation with the Attorney General, must conduct public hearings in every state in which either Conrail, or its subsidiaries, or Norfolk Southern, or its subsidiaries, operates to give all interest-

ed parties the opportunity to present testimony and evidence concerning the economic impact of this merger. The Secretary shall conduct these hearings in full cooperation with each State's Attorney General. At the conclusion of the hearing process, the Secretary shall prepare a report on the cumulative economic impact of the merger, and such report shall be placed upon the public record. Within ninety days of issuance of the report, any party affected adversely by the merger who participated in the State hearings process may file suit in any court of competent jurisdiction to enjoin the merger.

AMENDMENT No. 1317

On page 11, line 17, strike the period after "Agreements" and insert the following:

"Provided, however, that such alteration shall not be effective until affirmatively approved by an Act of Congress."

AMENDMENT No. 1318

On page 11, line 22, strike all after the word "until" through the end of line 23 and insert the following:

"such waiver has been affirmatively approved by an Act of Congress."

AMENDMENT No. 1319

On page 12 following line 8, insert the following paragraph:

"(7)(i) For a period of five years following the consummation of the sale, Norfolk Southern will cause Conrail to spend in each fiscal year not less than \$500 million in capital spending for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage and equipment of Conrail.

(ii) No amount spent upon normal repair, maintenance and upkeep of Conrail's railroad plant, property, trackage and equipment in the ordinary course of business shall constitute capital spending for purposes of sub-paragraph (i)."

AMENDMENT No. 1320

On page 12, following line 8, insert the following new paragraph:

"(7) For a period of ten years following the consummation of the sale, Norfolk Southern shall not permit Conrail, absent insolvency by Norfolk Southern, to liquidate, wind-up, dissolve or file for voluntary reorganization under Title 11 of the United States Code or any other law relating to bankruptcy, insolvency or relief of debtors."

DEPARTMENT OF DEFENSE APPROPRIATION, 1986

(Ordered to lie on the table.)

Mrs. HAWKINS submitted an amendment intended to be proposed by her to the bill (H.R. 3629) making appropriations for the Department of Defense for the fiscal year ending September 30, 1986, and for other purposes; as follows:

On page 132, beginning with line 24, strike out all that follows through line 3 on page 133 and insert in lieu thereof the following:

SEC. 8100. (a) Congress finds that—

(1) service in the Navy frequently requires Navy personnel to spend extended periods of time at sea away from their families;

(2) when contracts for short-term maintenance and repair of Navy vessels are performed at locations other than the home-

ports of the vessels, Navy personnel assigned to those vessels are required to be separated from their families for additional periods of time;

(3) family separation is the number one personnel retention problem in the Navy;

(4) the performance of short-term maintenance and repair of Navy vessels by shipyards in Navy homeports of those vessels promotes defense readiness by encouraging the development and maintenance of essential skills and facilities at locations convenient to the Navy;

(5) there is considerable competition for contracts to perform such maintenance and repair work in most Navy homeports; and

(6) fleet readiness and morale are improved when crew members have the opportunity (A) to train and practice fleet drills in other Navy vessels in homeports during periods that the vessels to which they are assigned are undergoing short-term maintenance and repair in the homeports of those vessels, and (B) to utilize the shore training facilities at homeports during such periods.

(b) It is the sense of the Congress that it is in the best interest of national security for the Navy to continue to require the performance of short-term maintenance and repair of Navy vessels at the homeports of such vessels when there is sufficient competition among contractors to perform such maintenance and repair in the homeports of such vessels.

NOTICES OF HEARINGS

SUBCOMMITTEE ON WATER AND POWER

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that the hearing previously scheduled on Tuesday, December 10, 1985, at 10 a.m. before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources will be rescheduled on a future date yet to be announced.

The purpose of this hearing is to receive testimony on S. 1785, a bill to amend the Garrison diversion project.

For further information regarding this hearing, please contact Mr. Russell Brown of the subcommittee staff at 202-224-2366.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON RULES AND ADMINISTRATION

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, December 4, 1985, in order to mark up Senate Resolution 204, authorizing supplemental expenditures for the Select Committee on Indian Affairs. Also scheduled is the selection of a vendor to provide a new telephone system for the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet during the session of

the Senate on Wednesday, December 4, to hold a hearing to consider the nomination of Jerry Calhoun, to be a member of the Federal Labor Relations Authority.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, December 4, to hold a hearing to consider the following nominations to the Department of the Interior: Ralph W. Tarr, Solicitor; Gerald Ralph Riso, Assistant Secretary for Policy, Budget and Administration; and J. Steven Griles, Assistant Secretary for Land and Minerals Management.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, December 4, in closed session, to hold a hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON MANPOWER AND PERSONNEL

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Subcommittee on Manpower and Personnel of the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, December 4, 1985, in order to consider proposals to change military retirement.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

VOLUNTARY COMPLIANCE

● Mr. QUAYLE. Mr. President, with the House Committee on Ways and Means recently completing work on their tax revision draft, the issue of tax reform is again the focus of considerable attention. I welcome this renewed attention on an issue which has been high on the agenda of the citizens of Indiana for some time. During my tenure in the Senate, I have noticed a rising discontent with the inequities, complexities, and vagaries of the Internal Revenue Code. I am proud that over 3 years ago, I introduced in the Senate the first comprehensive tax reform proposal—the SELF Tax Plan. SELF is designed to restore four essential principles to the Tax Code: Simplicity, efficiency, low rates, and fairness. These guidelines are what I believe to be the necessary framework of any tax code. It is significant that virtually all tax reform pro-

posals advanced since espouse similar goals.

While most people agree that tax reform is needed, honest men and women can and do disagree over the fine print. Although I do not acquiesce to each and every provision of the many tax overhaul packages, and realize that there is not universal agreement on each line of my own SELF plan, I feel that the best interests of our economy and our Nation are served by the continued debate over what form tax changes should take, not over whether reform is necessary. While it is clear that the constant threat of major tax changes casts a shadow of uncertainty over our economy, I firmly believe that comprehensive tax reform is needed to promote economic efficiency and reduce the burden and role of taxation on individuals' and businesses' economic decisions.

Once a tax schedule that doesn't promote or discourage certain activities relative to others is on the books, the incessant tide of major tax changes—3 out of the past 4 years, and 6 out of the past 10 years—will hopefully no longer be needed, and individuals, small businesses, and corporations may proceed with business as usual, not having to worry about the economy distortions of the Tax Code, and the oftentimes unfair distribution of the tax burden. That is why, although the uncertainty of change lingers during the course of this debate, I support and welcome the continued progress of tax reform. In addition to constancy, there is an overriding need for administrative and economic efficiency to be fundamentals of our Tax Code.

A driving force behind the movement for tax reform is the public's desire for simplicity. Simplicity must also be a factor in any Tax Code based on voluntary compliance, such as ours. I believe it to be essential for individuals to understand the basic requirements of the tax law and how to file their own returns. Our current Tax Code is a helter-skelter maze of loopholes, exemptions, deductions, requirements, and forms. Many taxpayers find it difficult and discouraging and thus do not receive the full benefits due them under the law. Neighbors receiving similar incomes pay vastly different amounts in taxes.

Mr. President, current law is so complicated that not even the IRS is able to render consistently reliable interpretations. Some years ago, a tax reform research group ran a test in which tax data was submitted for a hypothetical couple with one child. Incredibly, each of the 22 IRS offices around the country to which the data was submitted came up with a different result, ranging from a refund of

\$811.96 to an underpayment of \$52.14—a difference of \$864.10!

Unfortunately, events such as this are not limited to hypothetical taxpayers invented by research groups. I received a letter from a Hoosier taxpayer, on behalf of his 94-year-old aunt who voluntarily declared \$10 she had received for renting space in her garage for 1 month. The IRS replied to her tax return indicating that the \$10 was not declared and submitted on the proper form. To correct this would result in a 6- to 8-week delay in the processing of her form, or else she faced the possibility of an increased tax liability. Complex procedures such as this, surely do not foster compliance.

Mr. President, I ask that the correspondence I referred to be placed in the RECORD.

The correspondence follows:

EDSON W. MURRAY
AND ASSOCIATES,
Rensselaer, IN, August 8, 1985.

Senator DAN QUAYLE,
Longworth House Office Building, Washington, DC.

DEAR SENATOR QUAYLE: Enclosed is a copy of the notice my 94-year-old wheelchair-bound aunt received from the IRS. I fully agree with the feelings expressed in her answer.

No wonder IRS is pressuring Congress to supply additional funds to employ more help if they plan to audit every \$10.00 gross income item.

Incidentally, the minimum charge for completing the requested Schedule E is \$25.00. The "return" on her renting her garage was a net loss of \$18.67 (\$10.00 gross rent less \$2.00 taxes, less \$25.00 and less return receipt postage \$1.67). Some "profit."

Is this what IRS mean by "cracking down hard on tax cheaters"? Does the IRS have any idea how disturbed a person her age gets upon receipt of such a notice. Most business computers are programmed to ignore small billings. Can the Government really afford to follow-up on every \$10.00 income item? What happened to the program to save paper work?

This is absurd. I would appreciate your comments.

Yours very truly,
EDSON W. MURRAY.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Memphis, TN, July 30, 1985.

HELEN F. MURRAY,
525 S. Park Ave., Rensselaer, IN,

DEAR TAXPAYER: In processing your Federal income tax return for the year ended Dec. 31, 1984, we find we need more information or do not have the fully completed forms that are required. Please send us the information indicated or fill out the necessary lines of forms mentioned below and return the information and forms to us.

Schedule E to support the entry of \$10.00 on line 18.

Please send us the information requested within 20 days from the date of this letter so we can complete the processing of your return. Please enclose only the information requested; DO NOT send a copy of your return. It will take about 6 to 8 weeks from the time we receive your response to complete the processing of your return and

issue any refund due you. If we do not hear from you we will have to process your return using the information we have. This may increase the tax you owe or reduce your refund because we would not be able to give you proper credit.

If the item in question appeared in error on your return, please note that on this letter when you reply. DO NOT file a corrected or amended return because that will delay the processing of your original return.

AUGUST 5, 1985.

I rented 1/2 of my garage to a neighbor for one month. He gave me \$10.00, gross rent. I did not file a schedule E because I claimed no deductions. Your (employee) tells me it should have listed on line 22, Misc. Income. I am 94 years old. I have since sold the house and am living in a nursing home in a wheelchair. I have always tried to pay my taxes. I am told I was stupid for listing it. I was a High School teacher for over 40 years and always tried to instill citizenship responsibility in my students. Can't you make better use of your time than picking on old ladies for a \$10.00 income item which was voluntarily listed? No wonder tax cheating is on the increase. You should be ashamed.

(Signed) HELEN F. MURRAY.

Sincerely yours,
CATHERINE B. HARMON,
Chief, Correspondence Section. ●

DONNA E. SHALALA, PRESIDENT,
HUNTER COLLEGE, THE CITY
UNIVERSITY OF NEW YORK

● Mr. MOYNIHAN. Mr. President, I call the attention of my colleagues to an essay by one of the State of New York's distinguished citizens, an educator of extraordinary vision, Donna E. Shalala, president of Hunter College, the City University of New York.

President Shalala has had a rich and varied career. She was a Peace Corps volunteer in Iran and is the author of several important books. She has been both a Carnegie fellow and a Guggenheim fellow. Since 1980, she has been president of one of the Nation's finest colleges, Hunter College in New York City, which serves more than 17,000 students.

In an essay in the November 11 edition of the American Council on Education's "Higher Education & National Affairs," President Shalala recounts some of the contributions of nontraditional students to higher education, the obstacles they face, and the changing character of student bodies.

Mr. President, this article is quiet testimony to the good fortune of Hunter College to have as President Donna Shalala, and why the college she leads continues to provide outstanding educational opportunities to men and women from all walks of life.

I ask that President Shalala's essay in "Higher Education & National Affairs" be printed in the RECORD.

The essay follows:

NONTRADITIONAL STUDENTS IN HIGHER
EDUCATION

(By Donna E. Shalala)

Since the end of World War II, a quiet revolution has been occurring on college

campuses, and from every appreciable point of view, it is a revolution that has brought American higher education closer to its true self.

In the last 40 years, American higher education has changed significantly and dramatically. It has become less elitist, more democratic, more accessible, and less homogenous by paying more attention to the nontraditional student. In fact, at my institution and at public urban institutions like Hunter, the nontraditional student has become the tradition.

It's not surprising then that a new classification has already emerged. Yesterday's nontraditional students are today's "new generation of students," as described in a recent two-part report from the College Board. That report concludes that urban students today are more likely to be female, over 25 years of age, members of minority groups, enrolled part-time, and employed.

Recent statistics from the National Center for Education Statistics (NCES) confirm this trend. The NCES estimated that 255,000 fewer full-time students would enroll in colleges this fall. But the pool of part-time nontraditional students was expected to increase by 157,000.

The implications of this trend are enormous, and they have already been felt by many administrators and faculty members at both public and independent institutions. Educators are realizing that colleges and universities can no longer be organized only for students between the ages of 18 and 22. To continue to do so would be to risk financial difficulties and to lose capable students whose time commitments, financial burdens, and family obligations are more complex and more conflicting than those of the full-time, unattached, and financially dependent young student.

College and university officials will not be able to respond appropriately to the changing nature of their student populations if they do not periodically identify their students and assess their needs. Only by surveying their students will they begin to address the two general areas of higher education that will be increasingly affected by the influx of nontraditional students—the curriculum and student services.

Because the number of educationally disadvantaged students who are entering college is likely to increase, and because keeping students in school may depend more and more on how quickly and how effectively they are able to learn basic skills, good remedial programs will become essential for underprepared students. Where such programs already exist, college and university officials may need to expand course offerings or to improve the availability of required basic-skill courses. In addition, they will need to examine whether scheduling and course requirements meet the needs of students who can only attend school part-time or at night.

In the area of student services, innovation will also be necessary. New services may be needed. Existing services may need to be upgraded. And the way all services are scheduled may warrant evaluation. Because more students are spending less time on campus, informing students about existing services becomes a top priority. Colleges and universities may also have to establish peer counseling programs to help reentry students deal with the difficulties of adjusting to academic life. And many institutions will have to reopen or keep open administrative offices at night to serve their evening students.

Without question, the changing nature of the postsecondary student population will raise larger issues. Administrators may need to develop ways to deal efficiently and creatively with such complex problems as how to reorganize financial aid for the student who needs more child care support than tuition support, whether to require health service fees from working students whose employers already cover such costs, and whether the four-year academic time frame is reasonable for nontraditional students.

Some people will argue that the influx of these students, and the changes their presence will evoke, will cause higher education to lower its standards. I am not one of them. Institutions can and will continue to maintain academic standards while helping students to meet them.

At Hunter, I see many students, be they single parents, senior citizens, or foreign born, who are succeeding brilliantly despite extreme personal sacrifices and, perhaps, because of the extra efforts we make to provide services that meet their needs.

The presence of these students will enrich the quality of education in our classrooms. If we welcome them and help to keep them in school, we will be keeping the promise of America and telling the world that every American has a right to higher education.●

THE MEDAL OF HONOR

(By request of Mr. DOLE, the following statement was ordered to be printed in the RECORD.)

● Mr. GOLDWATER. Mr. President, the Congress holds an important, but often overlooked role relative to the establishment and design of the Nation's highest military award, the Medal of Honor. It is an interesting and almost unknown fact that at least five different types of medals have been given with the approval of Congress, although they do not all carry the same meaning as a true Congressional Medal of Honor.

Recently, I received a copy of an excellent article on this subject written by retired Lt. Col. P.S. Gage. His article details the development of the medal and the manner in which it has been presented. The article offers an interesting viewpoint and new facts on the medal and I ask that it be printed in the RECORD.

The article follows:

WHICH MEDAL IS WORTH DYING FOR?

(By Lt. Col. P.S. Gage, USA (Ret.))

It is probable that no award in this nation's history has been less understood, more abused or subjected to greater caprice than the Medal of Honor. Its history, since its inception, has been muddled. In many instances its presentation has been slipshod—a victim, as John Milton would have put it, of "confusion worse confounded." Its very name has inspired awe; yet ignorance of its purpose is rampant. But there is a solution to the problems associated with the award designed for heroes. It is with such matters as these that the following article addresses itself.

THE BRAVEST MEN IN HISTORY

Of Earth's beings only man is provided with intellect that supplies choices but not always accurate solutions. Down the centuries philosophers have expressed opinions as

to the status of the human's nature, and no less an authority than Aristotle cited eleven moral virtues. One of these is courage. Our assessment suggests that neither animal nor angel may experience the deathly fear and sickening dread that often assails us humans. But this paralyzing trauma sometimes is miraculously followed by a phenomenal antidote or quality called courage. Feats of courage and derring-do have been recorded in song and story throughout the ages. Legend records that the bravest man in pre-Christian times was one Cynaegirus, a brother of the Greek poet-dramatist Aeschylus, (According to J. Lempriere, DD on p. 418 of *Bibliotheca Classica of Antiquity and the Ancients*, 1857).

After the outnumbered but physically superior Greeks charged invading Persians on a September day 490 BC, the shores at Marathon became a vast confusion of Asiatics scrambling to board ships and flee. The historian Herodotus writes that Cynaegirus seized a boat with his right hand. It was severed by a scimitar. He grabbed with his left; and it also was cut off. But he still kept hold of the vessel with his teeth!

Through the centuries we can conclude that heroes' exploits have occurred most frequently at the sites of battles. Perhaps daring and a degree of macho may accompany him who overcomes fear of almost certain harm. Might it not be assumed that a majority of daredevils retain some modest form of self defense?

But what of the man who believes literally in the Fifth Commandment: "Thou shalt not kill?" He is known as a "C.O.", a conscientious objector. There have been only two of these in American history who have been awarded the Medal of Honor for courage above and beyond the call of duty at the risk of life while in action against an enemy. One of these in World War I was the legendary Sergeant Alvin C. York, who personally killed a number of German soldiers and captured 134 others.

The other "C.O." served in World War II and he flatly refused to carry any weapon. He was ostracized, called "yellowbelly," and given the most degrading and unpleasant details in the outfits in which he served. He ended up a medical corpsman attached to an infantry company on Okinawa. A slender man with unimpaired bearing, Private Desmond T. Doss, while in action there, shunned cover and moved to within 25 feet of enemy positions. Constantly under fire, he tended casualties, and himself was wounded several times. However, he refused to be evacuated. At one point he did use a rifle—but this only to bind the stock to his shattered arm. Doss' fearlessness, unselfishness, and sacrifice for his brother soldier continued almost daily for 20 days. When he was eventually dragged to the rear and hospitalized, his name became a symbol throughout the 77th Division for gallantry and courage far above and beyond the call of duty.

The Medal of Honor today recognizes American heroes of this high caliber. This Medal has grown in meaning and in the degree of sacrifice for which it is awarded. The records show that in World War II 49 per cent of the 431 awardees died or were killed. In Korea the dedication was even greater: 71 per cent of the decorations were posthumous, and in Vietnam 64 per cent of those on whom the Medal was conferred did not survive.

THE BEGINNING OF THE MEDAL OF HONOR

The United States is the greatest nation on this planet, and the Medal of Honor is a

national treasure. However, we as a people seldom are unanimous in our judgments, being sometimes intransigent and often inconsistent. George Washington—himself not too well recognized as one of the great commanders in history—attempted in 1783 to award visible symbols to brave soldiers. He bestowed three Purple Heart medals for "Singularly meritorious service." The idea never caught on!

From then until the Civil War 80 years passed, during which time Americans fought the British, Indians, and Mexicans. During this same period three countries introduced coveted decorations for their warriors. France introduced its *Légion d'Honneur* in 1803, Prussia (now Germany) its Iron Cross in 1813, and England created the famous Victoria Cross in 1856.

In America the tragic Civil War broke out with the bombardment of Fort Sumter in April 1861. The Navy's forces amounted to an insignificant number when compared to the Army's. Therefore it is not fully understood why the former service took the lead in suggesting a decoration for courage for sailors in action. Nevertheless eight months after hostilities began, the Chairman of the Naval Committee, Senator James W. Grimes of Iowa, introduced and President Lincoln approved our second (but at the time the only) award for valor. The date was December 21, 1861.

Washington in those days appeared chaotic—a city difficult to comprehend: merchants, politicians, and military added to the normal population and created L'Enfant-mazed traffic dust and dirt—and confusion—and bureaucracy. It is hard to imagine the birth of the Medal of Honor amidst this turmoil; but what is virtually inconceivable is how the War Department (Army) found justification for requesting its own version of a medal just two months later. (It was approved in July 1862.)

Now begins the raveled history of our greatest military decoration. The design was created by Christian Schussel, a native of Alsace, France. The engraver was Anthony C. Paquet of Hamburg, Germany. The scene depicted on a five pointed star features Minerva, the goddess of arts, wisdom, and war. She it was who possessed the ability to hurl Jupiter's thunderbolts. The gift of prophecy and means to prolong the lives of men were also hers. On the face of the Medal this deity holds in her right hand a shield emblazoned with the crest of the United States of America. This represents Union. To her left cringes an attacker who holds fork tongued serpents which strike at the shield, hoping to destroy Union. The design was for use by both Navy and Army. Only the clasp that attached the medallion to a ribbon differed for each branch of service.

Appearing as it did at the start of our greatest crisis, the Medal embraces symbolism and heritage unsurpassed in the annals of heraldry. We should be proud to know that roughly 2600 of the beautiful awards have been delivered to as many heroes of the Army, Navy, and Marines. (Sadly, today—as you will read further on—only the Navy and Marines are permitted this glorious decoration).

THE FIRST AWARDS

Even though the very earliest act resulting in a Medal of Honor was performed in an Indian campaign in February of 1861, the first presentation took place at the White House on March 25, 1863, in the presence of Abraham Lincoln. The incident was dramatic and was as well received by the

South as by the North. To this day history buffs recall and memorialize the famous action, known as the Andrews Raid.

The roots of this raid were laid about two years before Sherman invaded Georgia when a young northern civilian, James Andrews, conceived a plan to infiltrate the south (part of Tennessee and northern section of Georgia). He assembled 22 Union soldiers and one other civilian. All 24, disguised as civilians, dispersed after briefing with the mission of meeting again at Kennesaw, a small town just north of Atlanta. Here they would steal a train and go north to Chattanooga. They hoped to do serious damage to the rails over 100 miles and thereby cripple the movement of southern supplies urgently needed by the Confederate forces in the North.

On Saturday, April 12, 1862, twenty raiders (two never got to Georgia and two others awakened too late to board the train) jumped on an engine and cars that had stopped while its passengers were eating breakfast. Almost before the train (pulled by a famous locomotive called *The General*) got underway, the conductor gave chase on foot. Then another locomotive, *The Texas*, came up from Atlanta to chase the Raiders for 90 miles before capturing them south of the Tennessee border. The Raiders—all 24—were apprehended eventually. The incident built morale for the South because the Union attempt failed and very little damage was actually done to the tracks and bridges. But the North was pleased with the daring and the sacrifice, and good publicity resulted. Medals of Honor were issued to nineteen of the Raiders, but a group of six of them were presented with the very first decorations in Washington in March 1863.

The fate meted to eight of the spies—the supreme sacrifice—was summary and gruesome. Young Andrews was hanged and his body, cut down from the make-shift gibbet, was left to molder at the spot for 25 years. There, today a historical marker stands, a very short block from Atlanta's modern 42 story Bell South headquarters.

Seven other Raiders were similarly executed eleven days later but to the south of Atlanta's mid city. These men's bodies were cast into a potter's field. In the late 1880s all remains were taken north and given a fitting memorial and permanent interment.

THE ARMY ALWAYS HAD PROBLEMS WITH ITS MEDAL

Available records reveal interesting circumstances regarding the Army's handling of its Medal awards. Perhaps some information relative to administration and management provides a basis for conclusions.

For the whole period of the Civil War the Navy awarded 327 Medals while the Army eventually issued 1200. From the time a soldier, sailor, or marine performed a courageous act in battle until a Medal of Honor was given him took an average of only eight months for the Navy, between the years 1863 and 1865. The Army, on the other hand, distributed 340 up until 1866, but between 1870 and 1900 it gave out another 848 for heroes who were in Civil War battles, and then a final 12 up until and including three in the year 1917—the time of World War I. So the Army's average time for issuing was an unbelievable 30 years!

Since the Army appeared eager to have its very own Medal as far back as December, 1861 it seems incongruous that it did not or would not deliver the Medal to the troops in the field. This failure was overcome to some extent by commanders who devised their

own patches, medals, and other decorations to stimulate esprit and panache.

History records that the Army was disturbed at not having credible documentation for the issuance of its Medals, so in September, 1901, Elihu Root, the zealous Secretary of War, appointed to a board General Arthur MacArthur—himself a Medal of Honor winner in 1863, but who had not received it until 1900. (He was also the father of Medal of Honor winner General Douglas MacArthur). MacArthur's board reexamined "by-gone acts" of Medal claimants. In 1902 and again in 1903, boards and the War Department handed out opinions as to how to qualify for the Medal—won almost 40 years previously.

Again in 1902, Secretary Root while traveling in Europe visited our ambassador to France. The latter, Horace Porter, was a most unusual person. He had graduated number 3 in the class of 1860 at West Point, and became the second youngest general in the Union army at 27 (George A. Custer was the youngest at 24). Porter, who became General Grant's aide, won the Medal of Honor in 1863 and, like MacArthur, didn't receive it until later (1902). Grant, as President, again appointed him an aide. Still later, President McKinley named him ambassador to France. This is why Porter was in a position to suggest to Root that the Army Medal of Honor be redesigned. He obtained several French-made sketches and submitted them to three generals for their choice. One was selected and a new design—exclusively for the Army—was approved April 23, 1904. Although the above were not all the accomplishments of the astonishingly influential Porter, the following role was perhaps the most important insofar as the course of the Army's Medal of Honor was concerned: he was accorded the "special privilege of the floors of both houses of Congress for life." It might be appropriate to compare him to an early version of Admiral Hyman Rickover.

Nowhere can the need for a new design for the existing Medal of Honor be uncovered. The Army suffered an unworkable administrative delay, and substitute awards were developed because nothing else was then available. Counterfeiting was charged as a reason for a change, but if this had been a serious consideration then the Navy too would have raised objections. After all, both Medals had identical designs. But why would a new Medal correct these complaints?

AFTERMATH OF THE 1904 ARMY DESIGN

The overall impression of the separate Army Medal is that it appears to have been the result of a 40-year contrived effort, sometimes described as "interservice rivalry."

The long-term result has been a precedent that has allowed two other Medals to be introduced and accepted: an Air Force Medal of Honor (1965), and one for the National Aeronautics and Space Administration (NASA) (1969).

Despite the continuing efforts of the Army to provide strict rules for awarding its Medal, an unprecedented event transpired at the end of World War I. Five Marines were each awarded a Navy Medal of Honor. Then the Army presented its Medal to them for the same action. Nothing such as this would have occurred had there been just one, and only one, Medal.

The single most devastating indictment against the Army Medal—despite its touted French origin—is that the head of Minerva faces to the left! Heraldry recognizes this as

a sinister position. It denotes a "bastard." To display a left-facing image on the medalion is tantamount to flying our flag upside down. It should be noted that of the 110 decorations and ribbons utilized by all of today's military services, there are only two lesser ribbons whose design elements face left. They are the American Defense Service medal of September 8, 1939, to December 7, 1941, and the Organized Marine Corps Reserve medal.

THE NAME OF OUR HIGHEST AWARD

Aside from being promiscuous in its numbers, our Medal is further afflicted with a name problem. Its name is generic. It is as if one called a "747", "the plane" or an "M-16", "the gun." Medals of honor are legion: they are used by states, cities, police departments, life-saving awards, and so on. The prefix "Congressional" for our national Medal of Honor is frequently used but is incorrect. Medal of Honor societies have solicited Congress to add the additional clasp, but without success. There is good reason for our lawmakers' rejection of this: there already are five separate categories of Congressional or Congress-approved medals. They are:

1. Gold medals to individuals (the oldest category; first awarded on March 25, 1776);
2. Military Medals of Honor (first qualified on February 13, 1861);
3. Silver medals to individuals;
4. Privately sponsored (commemorating people, places and events); and
5. National Aeronautics and Space Administration (1969).

The present official and correct titles for our Medals of Honor are:

Army, Navy, and Air Force: "Medal of Honor"; and NASA: "Congressional Space Medal of Honor."

THE ARMY MEDAL HAS BEEN AWARDED FOR CAPRICIOUS REASONS

As difficult as it is to believe, 864 Army Medals were authorized for a military action that never occurred and to nearly 600 men who were not involved.

After the Battle of Chancellorsville in May 1863, Lee and his Army of Northern Virginia proceeded north. Understandably numbers of residents in Washington (not 75 miles away) became uneasy. Perhaps there were even a few whose memories stretched back 47 years to a previous invasion by enemy troops. In any event, Secretary of War Stanton had learned that in the defenses of the Capitol there were men whose enlistments were to expire on June 26th. He urgently appealed to the 27th Maine regiment whose service was coming to an end on this date, but the troops refused to a man to stay on. Their commander attempting to clarify the situation gained 300 volunteers. For these men the Secretary of War now directed that Medals of Honor be given. However he was unspecific, so that when the bureaucratic results were reviewed, 864 medals were presented. Almost two-thirds of the soldiers never volunteered, nor were even present.

Major General Joseph Hooker, commanding the Army of the Potomac counted the above defense forces among his men. It is of historical yet doubtful cultural interest that the oldest profession was performing prodigiously at this period midst the chaos of the Capitol as previously alluded to. And although nowhere can be found the names of all 864 Medal donees, collectively they have transferred their unit commander's name to the world's best known sales-lady—the "hooker."

It has already been noted that the Army exerted much effort between 1897 and 1903 to approve and issue more than two-thirds of its overdue Medals. Then came a new brouhaha: In 1916 and 1917 all previously awarded Medals were again examined and 911 were withdrawn! These included more than 800 given to the men defending the city of Washington (above). (The Army presented a total of 1,200 Medals, not including these 800). It should be pointed out that up to our present time the Navy has presented over 1,000 Medals to brave sailors, marines, and one Coast Guardsman and has never withdrawn a single decoration.

The Army continued to remind itself of the criteria for qualification for its highest decoration, and on July 9, 1918, a statute proclaimed that this Medal "shall hereafter (be awarded) in action involving actual conflict with an enemy." Following this, on May 2, 1927, the War Department issued a regulation restating the above exactly. Then just seven months later, on December 14, 1927, the 70th Congress approved a law that gave Charles A. Lindbergh the Army Medal of Honor "for displaying heroic courage . . . at the risk of his life."

On December 23, 1975—48 years later—an other act of the 94th Congress provided for a "silver medal, equivalent to a non-combat Medal of Honor" to be awarded to Charles E. Yeager ("for) risking his life in piloting . . . air plane faster than . . . sound." (This is the third category of Congressional medals, p. 10, above).

"Charles A. Lindbergh was unique in the world for all history. His original exploit in May 1927 captured the attention of this planet. In its day, his Atlantic crossing eclipsed Neil Armstrong's 'giant step for mankind' on the moon in 1969.

"In contrast, there are the almost unknown, and for a while classified, efforts of Charles E. Yeager. In breaking the sound barrier, this flier endured the continuing stresses of daring, of pain, and of courage seldom equalled and never exceeded by any other flier known.

"American well wishers went wild in acclaiming 'Lindy'. They completely ignored standards, procedures, and laws. In haste and disregard they gave him a medal for which he was actually unqualified. By comparison, Yeager's acclamations could not find a medal either. But they were not so pressed that they issued him a fraud.

"They convinced the politicians and the President to give him an award which few recognize and which is nowhere recorded."

Our most coveted decoration for great courage beyond the call of duty is stipulated only for men in our armed forces, yet in 1921-23 our government awarded Medals of Honor to the unknown soldiers of other nations, e.g. England, France, Belgium, Italy, and Rumania (the last named now in the Soviet bloc).

Moreover a Medal of Honor was awarded to an unauthorized civilian who was at the earliest engagement of the Civil War: Bull Run, July, 1861. This Medal was conferred on a very emulous female and "contract surgeon." When the review board of 1916 met she was included among those 911 persons whose decorations were withdrawn. But, believe it or not, on March 4, 1977, the Carter administration returned Dr. Mary Walker's Medal of Honor. One can only wonder as to

the contrasting contributions of courage displayed by Dr. Walker and Private Desmond T. Doss!

The last case in which an Army Medal of Honor seemed obviously non-qualified was that of one Major General Adolphus W. Greely who received his recognition March 21, 1935. This could be history's most controversial award of the Medal of Honor because the only citation for his decoration says it was "for his life of splendid public service." There was no "risk", "no actual conflict with an enemy," no "sacrifice." So why a Medal of Honor for this man? No one seems to know. But there is some speculation that runs like this: In 1926, Admiral Richard E. Byrd was given a Navy Medal of Honor for his air flight over the North Pole. This was permissible because then the Navy could apply the citation that Byrd "displayed extraordinary heroism in the line of his profession." So now regarding Greely, it is conjectured that the Army sensed a little pique. Unobtrusively it worked on obtaining equal recognition. You see, Greely had been a part of an arctic expedition from 1881 to 1884 in which 19 men died and only he and six others survived. One could ask why this award was not given much earlier (Greely was 91) and why the danger was not described in the citation? Rivalry?

THE FUTURE FOR OUR MOST COVETED AND DISTINGUISHED MILITARY AWARD

Its heritage and its birth are sublime (this refers only to the Navy Medal).

Its generic name could have a little glory, heraldry, and prestige added.

It does have too "counterfeits" (Army, Air Force, NASA). If we are happy with but one flag, one anthem, one motto, one national symbol (eagle), then one Medal of Honor is quintessential.

It needs a sister to compliment the future courageous acts of Americans at peace.

The vicissitudes of our Medal of Honor would probably cease if generals and politicians withdrew from planning how to change the medal. A non-political, permanent Commission answerable only to the President should be a forward step.●

CONGRESSIONAL CALL TO CONSCIENCE VIGIL FOR SOVIET JEWRY

● Mr. QUAYLE. Mr. President, today I am pleased to participate in the Congressional Call to Conscience Vigil for Soviet Jewry. Earlier last month we saw several pre-summit "human rights gestures" by the Soviet Union. Such gestures include the release of Yelena Bonner, wife of human rights activist, Andrei Sakharov, and the announced release of 10 Soviet citizens wishing to be reunited with their spouses abroad. While these developments are certainly encouraging, we must not lose sight of reality. The situation for Jews in the U.S.S.R. has not improved and there is no evidence that it is changing. Last year emigration levels fell to an all-time low of 896 as compared to over 50,000 just 6 years ago.

On September 30, during an interview with French journalists, Soviet General Secretary, Mikhail Gorbachev specified two criteria for the emigration of Jews from the Soviet Union.

First, they must wait 5 to 10 years from the time of their last exposure to state secrets. Second, they must express their desire to be reunited with family abroad. My files contain the names of well over a dozen cases that have met these requirements yet are still being denied their right to emigrate.

One such case is that of Vladimir Prestin who has now waited 14 years from the time he first applied for an exit visa. Prestin, a computer engineer who wishes to emigrate to Israel, quit his job in 1968 to avoid being denied an exit visa because of the excuse that he knew "scientific secrets." Since then, he has found employment in various odd jobs that require no technical expertise. Since 1970 he has been continuously denied permission to emigrate on the grounds that he knows technical secrets. During this time, he and his family have endured years of harassment.

In light of such cases we must continue to insist on a regular emigration policy guaranteeing the right to emigrate and be reunited with loved ones abroad. As we progress, an understanding of such basic human rights must be an integral part of the developing relationship between the United States and Soviet Union.

LEGISLATION TO ESTABLISH A PERMANENT BOUNDARY FOR THE ACADIA NATIONAL PARK IN THE STATE OF MAINE

● Mr. COHEN. Mr. President, I want to express my support for passage of S. 720, legislation I cosponsored with Senator MITCHELL to establish a permanent boundary for Acadia National Park in my home State of Maine. It is a truly momentous occasion that we are marking in the consideration of this legislation on the Senate floor, for the provisions of S. 720 were 20 years in the making. I am most appreciative of the Senate leadership for placing S. 720 on the Senate's calendar, and I also want to thank Senator WALLOP and his staff, and Senator McCLEURE, for expediting the Energy Committee's consideration of this important bill.

In securing the passage of S. 720 today, it is our intent to achieve a lasting resolution of a longstanding problem which has negatively affected both the park and the local towns and area residents.

Acadia National Park is a spectacularly beautiful place and a lasting testament to the philanthropic nature of those familiar with Mount Desert Island and its environs. Its natural beauty is treasured by both the casual visitor and the professional conservationist and the island is also considered a wonderful place to live. Many of those charmed by Acadia's beauty

¹ Reprinted from an article by this author in *Aerospace Historian*, December 1983, p. 258 with permission. Copyrighted 1984 by the Air Force Historical Foundation.

have responded by donating their land to the Park Service for inclusion into the park itself.

Herein lies the root of the problem addressed in S. 720. The original charter of Acadia National Park allows the Park Service to acquire land for the park only through donation. It can neither purchase specific parcels nor take those threatened by development through eminent domain. The evolution of the park has certainly been unique, and it has created complex problems.

The Park Service has been forced to administer a jigsaw puzzle of a park, with acreage scattered around Mount Desert Island. In addition, it has been prohibited from acquiring parcels of land it considers crucial to the maintenance of the character of the park, unless they are donated. On the other side of the issue, the towns on Mount Desert Island and on the mainland of Hancock County where park land is located have found themselves with no means of controlling the loss of extremely valuable property to the park. The specter of a continually eroding property tax base is something all town managers fear. And this is the situation which continues to exist today, to the detriment of both the towns and the park and with the effect of exacerbating the emotionalism of this longstanding controversy.

S. 720 therefore draws a permanent boundary around Acadia Park and provides for the exchange of certain key parcels identified by the Park Service as desirable for inclusion in the park and by the towns as important to their needs. The Park Service is given eminent domain authority over all parcels within the park's boundary, subject to certain conditions of use. In sum, in exchange for the loss of 1,900 acres of taxable land to the Park Service, the towns receive the assurance that the park will not expand indefinitely in the future.

I want to commend my colleague, Senator MITCHELL, for his work on this legislation, and I join him in recommending to the Senate the passage of legislation which makes sense for Acadia National Park and the residents of Mount Desert Island. Acadia's many visitors, some 4 million in 1984, know of the park's unique beauty—a combination of rugged cliffs and mountains, churning seas, peaceful spruce forests and placid lakes. It is clearly in our best interests to preserve this land for the enjoyment of future generations, and we will share with the Park Service the benefits of a clarified charter for Acadia. At the same time, we must recognize the unusual constraints within which the park management must operate. In doing so, we come to the realization that area residents and town managers have legitimate concerns regarding the future of their tax base and their ability

to meet their responsibilities for road management, sewage treatment, and other administrative tasks.

There is no doubt in my mind that both the Park Service and the local towns should benefit from the existence of Acadia Park in the area. The ability to make this a mutually beneficial relationship has been hampered by the terms of the park's charter and both parties have suffered as a result. The need to achieve a compromise in the interest of future cooperative planning is at hand, and passage of this legislation demonstrates our commitment to such a future.

Once again, I want to express my thanks to Senator WALLOP and the staff of the Public Lands Subcommittee, especially Tony Bevinetto and Tom Williams. Without their interest and support, the Acadia affair might have lingered on for many more years.●

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESOLUTION HELD AT DESK— HOUSE JOINT RESOLUTION 424

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate receives from the House, Senate Joint Resolution 424, the Year of the Flag, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESOLUTION HELD AT DESK— HOUSE JOINT RESOLUTION 440

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate receives from the House, House Joint Resolution 440, National Autism Week, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

COMMENDATION OF CREATION AND PRODUCTION OF DC-3 TRANSPORT AIRCRAFT

Mr. DOLE. Mr. President, I send to the desk a resolution on behalf of Senators DANFORTH, KASSEBAUM, CRANSTON, WILSON, and HAWKINS, and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The bill clerk read as follows:

A resolution (S. Res. 264) to commend the creation and production of the DC-3 transport aircraft.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DANFORTH. Mr. President, I offer this resolution on behalf of Mrs. KASSEBAUM, Mr. CRANSTON, Mrs. HAWKINS, Mr. WILSON, and myself that honors the design and production of the Douglas DC-3 transport aircraft.

The DC-3 is the airplane that revolutionized an industry. It is also known as the Dakota, and to the military as the C-47 Skytrain. It has been affectionately named the "Gooney Bird," and the "Old Crate," but after its 50 years of remarkable service, I would like to add one more name that I think the DC-3 deserves, that of "Grand Old Lady."

The DC-3 had a rather humble beginning. In fact, there was not even one photograph made of its historic first flight. But over the years, as more DC-3's and their military counterparts went into service, the legend grew. Stories told by military crews who flew this twin engine transport helped shape the reputation. The DC-3 became known as an aircraft that performed, even under the most challenging circumstances, and as such was a favorite subject for poems, songs, and war dispatches. Besides transporting troops and cargo, it doubled as a hospital plane, glider amphibian, flying command post, bomber—even a flying laundromat. General Eisenhower credited it with being one of the allies' most important weapons in winning World War II.

After the war, thousands of C-4's converted to airline use put civilian aviation back into business. The DC-3 and its predecessors pioneered many advances in safety and comfort. Heated cabins, soundproofing, powered brakes, constant speed propellers, and autopilot were breakthroughs for passengers and pilots alike. Other civilian versions were used for firefighting, executive transports, agricultural spray planes, and ski-mounted planes needed for landing at the North and South Poles. Again, there came stories to build the reputation of this outstanding aircraft. Mr. President, one particular tale comes to mind and I would like to share it with my colleagues.

One day in the late 1950's, a commercial flight left Phoenix, AZ. About 50 miles north of the city, it ran into storm clouds and got permission to climb above them. Suddenly a downdraft rushed against the plane. While trying to regain control of the airplane, the pilot clipped the ledge of a mountain, shearing off nearly 12 feet of the wing surface. Despite this fact,

the little DC-3 carried all 26 passengers back the 50 miles to a safe landing at Phoenix Municipal Airport. A remarkable feat indeed.

Mr. President, today there remain more than 2,000 DC-3's in action around the world. This airplane has served us well in peace and in war. It has been a durable monument to good design and talented engineering. I wish this "Grand Old Lady" many more years of success in the sky.

Mr. President, I ask unanimous consent that an article from the December 1, 1985, edition of the New York Times on the Douglas DC-3, and the full text of this resolution, be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From The New York Times, Dec. 1, 1985]

At 50, THE DC-3 "GOONEY BIRD" IS STILL FLYING HIGH

(By Ralph Blumenthal)

When the National Aeronautic Association holds its annual Wright Brothers dinner Friday in Washington, gracing the head table will be a chunky, snub-nosed, 50-year-old guest of honor: a Douglas DC-3.

Somewhat, inviting one of the legendary workhorses of the sky to a 50th birthday dinner in a hanger at Dulles International Airport is not too extravagant a gesture for admirers of the "Gooney Bird" that launched the era of commercial aviation and helped to carry Allied forces to victory in World War II.

In its military configuration as the C-47, according to the McDonnell Douglas Corporation, the twin-engine propeller plane has flown more miles, hauled more freight and carried more passengers than any other aircraft in history. Admirers of the plane have also been known to boast that it thrived on neglect, never wore out and practically flew itself.

"It was the right size airplane at the right time and the first plane able to make money just carrying passengers," said Harry Gann, president of the American Aviation Historical Society of Santa Ana, Calif.

GLEAMING SILVER AND PROUD LOOKS

"It's the looks," said Robert Parmerter, a 43-year-old social studies teacher in Schenectady, N.Y., struggling to explain just what it was that made him such a fan of the DC-3 that he travels everywhere to air shows to photograph the plane. "It's a proud look," he said, "it a nose in the air and all gleaming silver."

Over the years, few machines and certainly no other airplanes have been the object of such adulation as the DC-3, the Douglas company's third model, introduced on Dec. 17, 1935 as a "sleeper-transport" for American Airlines. By 1946, when production ceased, 10,629 DC-3's had been produced. Of these, according to McDonnell Douglas, 1,500 to 2,000 are still flying for third world countries, charter operators, corporate and private owners and collectors.

The DC-3 remains a favorite of many armies and security forces. In the Vietnam War, a gunship version dubbed "Puff the Magic Dragon" was fitted with three rapid-firing miniguns that could blanket and pulverize a wide target. And the plane is also a favorite of drug smugglers.

One record-holding DC-3, owned and still flown by Provincetown Boston Airways

through countless engine changes, has logged more than 87,000 flight hours, the equivalent to 10 unbroken years in the air.

Another of similar vintage is operated by Sentimental Journeys, a charter company in Bluefield, W. Va., that provided the plane to the sports flying enthusiasts of the National Aeronautic Association for their hanger dinner on Friday. Still others are owned by DC-3 clubs the world over.

In addition, DC-3 cultists collect pins, patches, ties and coffee mugs as well as books and periodicals. A DC-3 bibliography compiled by Mr. Gann of McDonnell Douglas lists 171 magazine articles, 20 books and 4 government and scientific reports. Devotees even play an informal version of DC-3 trivia.

The object of such enduring worldwide affection was the brainchild of Donald W. Douglas, a Brooklyn-born aviation pioneer and engineer commissioned by a predecessor of Trans World Airlines in 1932 to build a plane that would "out-everything" all rivals.

His first effort, the prototype DC-1 ("D" for "Douglas" and "C" for "commercial"), was bought by Howard R. Hughes. After modifications, the Douglas company called the plane the DC-2 and sold 25 to T.W.A. at \$65,000 each. The subsequent variation, the DC-3, which had its maiden flight on Dec. 17, 1935, evolved into a 160-mile-an-hour, two-engine plane with a wingspan of 95 feet, a length of 64 feet and a capacity of 24 passengers. A version made for American Airlines had luxury sleeper berths for 14 passengers and a fully-enclosed honeymoon compartment.

From 1936 to 1939 passenger air traffic increased fivefold and carriers clamored almost exclusively for DC-3's. The passenger load freed the airlines for the first time from dependency on Government mail contracts and provided the economic incentive to expand and develop route systems. By the end of its decade in production, the DC-3 was carrying more than 90 percent of all domestic air passengers.

WARTIME EXPLOITS SHAPE MYSTIQUE

It was the plane's wartime exploits that created much of its mystique.

In one famous episode, a parked Chinese DC-3 lost a wing to a Japanese air attack in 1941. There were no replacement parts but a DC-2 wing was found in Hong Kong. The wing, five feet shorter, was attached and somehow the plane flew home safely 900 miles to Hong Kong. Inevitably it became forever known as the DC-2½.

A C-47 is also credited with downing one of two Japanese "Zero" fighters over the Himalayan "Hump." The Zero, seeking to ram the lumbering Yank transport, sheared off part of the C-47's tail before crashing into a mountain. The crippled C-47, however, succeeded in flying safely back to base.

When the Soviet Union cut off access to West Berlin in 1948, the plane was used in the airlift to bring food to that city.

More recently, in April, 1957, a Frontier Airlines DC-3 flying north of Phoenix hit a sudden downdraft that brushed the left wing against a mountaintop, shearing off about 10 feet of the wing. Still, the pilot managed to maneuver the plane back to a safe landing in Phoenix.

The plane has even been reported on occasion to have safely landed itself after the pilot bailed out. But there have been notable crashes as well, including one that killed Carole Lombard in 1942 and a midair collision of an Eastern DC-3 with a Navy fighter plane near Fort Dix, N.J., in July 1949, killing 16 people.

"They thrived on a steady diet of neglect and overwork," the writer Robert C. Ruark once reminisced in a newspaper column. "They flew with sand in the carburetor and were maintained by cannibals and aborigines. They rattled, banged, jumped and bounced but by and large they flew."

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 264) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 264

Whereas an aviation legend began on December 17, 1935 when the Douglas Aircraft Company unveiled the DC-3 transport aircraft in Santa Monica, California;

Whereas the DC-3 transport aircraft, whose first flight was one hour and forty minutes in duration, has been utilized in civilian and military transportation in excess of 8,500,000 miles;

Whereas such aircraft's combination of speed, payload, range, economy and reliability revolutionized air travel throughout the world;

Whereas the Douglas Aircraft Company's production of 10,000 military versions (C-47) of such aircraft, at a peak rate of 1.8 aircraft per hour, made such aircraft the single most produced aircraft in the world, and resulted in such aircraft being named by General Dwight D. Eisenhower as one of the four weapons that most helped to secure the Allied victory in World War II; and

Whereas over 2,000 DC-3 transport aircraft are still in service around the world today: Now, therefore, be it

Resolved, That the Senate, on the Fiftieth Anniversary of service of the DC-3 transport aircraft, commends the McDonnell Douglas Aircraft Company for its leadership in creating and producing the aircraft that revolutionized the air transport industry.

Mr. DOLE. I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EDUCATION OF THE HANDICAPPED ACT AMENDMENTS

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives in S. 415.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon it amendments to the bill (S. 415) entitled "An Act to amend the Education of the Handicapped Act to authorize the award of reasonable attorneys' fees to certain prevailing parties, and to clarify the effect of the Education of the Handicapped Act on rights, procedures, and remedies under other laws relating to the prohibition of discrimination", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Hawkins, Mr. Biaggi, Mr. Williams, Mr. Hayes, Mr. Martinez, Mr. Eckart of Ohio, Mr. Jeffords, Mr. Goodling, Mr. Coleman of Missouri, and Mr. Bartlett be the managers of the conference on the part of the House.

Mr. DOLE. Mr. President, I move that the Senate disagree to the House amendments and agree to a conference requested by the House and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer [Mr. BOSCHWITZ] appointed Mr. HATCH, Mr. WEICKER, Mr. NICKLES, Mr. KENNEDY, and Mr. KERRY conferees on the part of the Senate.

DEBT LIMIT CONFeree

Mr. DOLE. Mr. President, I ask unanimous consent that Senator JOHNSTON be added as a conferee to House Joint Resolution 372, the debt limit extension measure, in lieu of Senator CHILES.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY

RECESS UNTIL 10:15 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10:15 a.m. on Thursday, December 5.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. DOLE. Following the recognition of the two leaders under the standing order, Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business tomorrow not to extend beyond the hour of 10:45 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. Mr. President, at 10:45 a.m., it will be the intention of the majority leader to turn to the consideration of S. 259, the sports franchise bill, assuming there has been a resolution of some differing views, or the White Earth Indian Reservation, which I understand the distinguished Presiding Officer [Mr. BOSCHWITZ] may be able to work out with Senator MELCHER. I am hoping we can lay down one of those measures at 10:45 a.m. I am not certain there will be votes necessary on either one. I hope not—if they can be resolved.

Mr. MATHIAS. If the majority leader would yield, just so he is under no misapprehension, I think there would be prolonged discussion of the sports franchise bill.

Mr. GORE. If the majority leader will yield further, as I have already

said to him, that appears to be likely. Although many of us are willing, ready, and even eager to try to come to some agreement, it does appear that will be difficult.

Mr. DOLE. I have indicated to the chairman of the committee and others who have interest that we do not have much time so, if we cannot work it out, it will not come up. There is not enough time to get into an extended debate on it. But I am still hopeful that we can work something out.

I know the Senator from Washington [Mr. GORTON] has been working on it, trying to iron out some of the difficulties. And Senator DANFORTH is on his way to the floor. Perhaps with the distinguished Senator from Maryland, we might have a little huddle to see if we can work it out.

We also hope to turn to the executive calendar on judges, assuming we have reached a satisfactory agreement on processing of judiciary nominations.

Conrail legislation is still listed, the Metropolitan Washington airports transfer bill.

I also indicate to my colleagues that there are a number of very important conference reports tomorrow, including the farm bill, debt ceiling extension; perhaps though not certain, conferees will be appointed on reconciliation tomorrow; and the Appropriations Committee will be marking up the continuing resolution tomorrow. We hope to begin action on that on Friday. So tomorrow may not be a busy floor day, but it will be a busy day for most Senators in conferences or in their committees.

RECESS UNTIL 10:15 A.M. TOMORROW

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move we stand in recess until 10:15 a.m., Thursday, December 5, 1985.

The motion was agreed to; and the Senate, at 5:58 p.m., recessed until Thursday, December 5, 1985, at 10:15 a.m.

NOMINATIONS

Executive nominations received by the Senate December 4, 1985:

FOREIGN SERVICE

The following-named career member of the Senior Foreign Service of the Department of Agriculture for promotion in the Senior Foreign Service to the class indicated:

Career member of the Senior Foreign Service of the United States of America, class of Minister-Counselor:

Frank A. Padovano, of Virginia.

The following-named career members of the Foreign Service of the Department of Agriculture for promotion into the Senior Foreign Service as indicated:

Career members of the Senior Foreign Service of the United States of America, class of Counselor:

Norman R. Kallemeyn, of Maryland.
John E. Riesz, of Florida.

FOREIGN SERVICE

The following-named persons of the agencies indicated for appointment as Foreign Service officers of the classes stated, and also for the other appointments indicated herewith:

For appointment as Foreign Service officers of class 1, Consular officers, and Secretaries in the Diplomatic Service of the United States of America:

DEPARTMENT OF AGRICULTURE

Gerald W. Harvey, of Virginia.
James A. Truran, of Maryland.

DEPARTMENT OF COMMERCE

Richard R. Ades, of Florida.

For appointment as Foreign Service officers of class 2, Consular officers, and Secretaries in the Diplomatic Service of the United States of America:

DEPARTMENT OF STATE

Marshall F. Atkins, of Tennessee.

DEPARTMENT OF AGRICULTURE

Weyland M. Beeghly, of Iowa.
William L. Brant II, of Oklahoma.
Peter O. Kurz, of New Jersey.
Thomas A. Pomeroy, of Maryland.

For appointment as Foreign Service officers of class 3, Consular officers, and Secretaries in the Diplomatic Service of the United States of America:

DEPARTMENT OF AGRICULTURE

Richard B. Helm, of the District of Columbia.
Nancy Hirschhorn, of Connecticut.
Cleveland H. Marsh, of the District of Columbia.
Susan H. Scurlock, of Nebraska.

DEPARTMENT OF COMMERCE

William M. Yarmy, of New York.
For reappointment in the Foreign Service as Foreign Service officer of class 4, Consular officer, and Secretary in the Diplomatic Service of the United States of America:

U.S. INFORMATION AGENCY

Arthur Norman Buck, of California.
For appointment as Foreign Service officers of class 4, Consular officers, and Secretaries in the Diplomatic Service of the United States of America:

DEPARTMENT OF COMMERCE

Robert M. Shipley, of Kentucky.

U.S. INFORMATION AGENCY

Margo Carlock, of Florida.
Anthony O. Fisher, of Florida.
Caron Louise Garcia, of California.
Thomas D. Gradisher, of Ohio.
Jocelyn A. Greene, of Virginia.
Beth L. Ritchie, of California.
Mary Ann Whitten, of California.

The following-named members of the Foreign Service of the Departments of State and Commerce, and the U.S. Information Agency, to be Consular officers and/or secretaries in the Diplomatic Service of the United States of America, as indicated:

Consular officers and secretaries in the Diplomatic Service of the United States of America:

John Quincy Adams, Jr., of Massachusetts.

Pauline T. Albright, of New Hampshire.

David William Ball, of Ohio.

Mary Frances Bentz, of New Jersey.

Renee Nichele Brooks, of Maryland.

Anne E. Clausing, of Florida.
 Evelyn Aleene Early, of Texas.
 Joao Maria Ecsodi, of Virginia.
 Janet L. Edmonson, of California.
 Silvia Eiriz, of New York.
 Robert Joseph Faucher, of Arizona.
 David R. Fitzgerald, of California.
 Joseph S. Ford, of New Jersey.
 Robert Stephen Ford, of Maryland.
 Max L. Friendersdorf, of Florida.
 Bernard Gainer, of Kansas.
 Julie A. Garrett, of Ohio.
 Franklin J. Gilland, of Texas.
 Ann Vincent Gordon, of Virginia.
 Stanley R. Guzik, of Illinois.
 Constance Hammond, of Maryland.
 Richard Dale Haynes, of Washington.
 Virginia M. Holte, of California.
 A. Joan Walsh Howland, of Utah.
 Thomas Keith Huffaker, of California.
 Patricia White Johnson, of Oregon.
 Henry Edward Kelley, of New Hampshire.
 Judy L. Kerchner, of New Jersey.
 Deborah Lynne Kingsland, of New York.
 Donald J. Kluba, of Ohio.
 Bruce A. Krause, of Michigan.
 Mark S. Kryzer, of Minnesota.
 Edward Chung-Yuan Lee, of California.
 Noelle L'Hommiedieu, of New Mexico.
 Kirk D. Lindly, of Virginia.
 Mary Kay Loss, of Arkansas.
 Bruce Alan Lowry, of California.
 Eric Manuel Maestas, of Texas.
 Thomas James Magee, of Pennsylvania.
 Elizabeth Manak, of Virginia.
 Carol Marks, of California.
 Betty Harriet McCutchan, of Texas.
 Brian Moran, of New York.
 Thomas F. Morrow, of Pennsylvania.
 Cameron Phelps Munter, of California.
 Mark A. Murray, of New York.
 Krishan Kumar Hans Nanda, of Virginia.
 Marcia Nye, of Michigan.
 Andrea I. O'Kington, of California.

Mitchell Evan Optican, of California.
 Gardiner P. Pearson, of Virginia.
 Pat E. Perrin, of California.
 Nancy Bikoff Pettit, of Virginia.
 Marjorie R. Phillips, of California.
 Robert W. Richards, of Arizona.
 Keith E. Riggins, of Delaware.
 Sturgis Grew Robinson, of California.
 Norman T. Roule, of Pennsylvania.
 Alvin David Rutledge, of California.
 Lee M. Sands, of Connecticut.
 Edmund R. Saums II, of Ohio.
 Kenneth Bernard Schmitz, of Maryland.
 Richard Kirk Sherr, of Colorado.
 Paul Sigur, of Maryland.
 Peter N. Sinegal, of Louisiana.
 Kristen Brunemeier Skipper, of North Carolina.
 Gregory W. Smith, of the District of Columbia.
 Mark Brian Stein, of New Hampshire.
 Nance M. Styles, of Indiana.
 Dona Riddick Tarpey, of Virginia.
 Donald Gene Teitelbaum, of Virginia.
 James Lafayette Traweck, of Texas.
 Claudette M. Trout, of Pennsylvania.
 Mary Kottke Vincent, of Maryland.
 Dianne M. Vogel, of Ohio.
 James Bowen Warlick, Jr., of the District of Columbia.
 Evelyn Wheeler, of Vermont.
 Avon Nyanza Williams III, of Tennessee.
 Karen L. Woodworth, of New York.
 Marilyn Wyatt, of California.
 Consular Officers of the United States of America:
 Ira E. Kasoff, of Massachusetts.
 Jay A. Rini, of Ohio.
 Barbara L.Y. Slaweki, of New Jersey.
 Daniel L. Thompson, of California.
 George G. Wood, of Virginia.
 Secretaries in the Diplomatic Service of the United States of America:
 Vicky C. Eicher, of Florida.

Maurice J. Katz, of New Mexico.
 Beaumont A. Lower, of Washington.
 Richard J. Newquist, of Washington.
 Vincente Tang, of California.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
 Otis R. Bowen, of Indiana, to be Secretary of Health and Human Services.

THE JUDICIARY

David R. Hansen, of Iowa, to be U.S. district judge for the northern district of Iowa vice Edward J. McManus, retired.

Walter J. Gex III, of Mississippi, to be U.S. district judge for the southern district of Mississippi vice a new position created by Public Law 98-353, approved July 10, 1984.

Miriam G. Cedarbaum, of New York to be U.S. district judge for the southern district of New York vice Charles E. Stewart, Jr., retired.

Robert J. Bryan, of Washington, to be U.S. district judge for the western district of Washington vice a new position created by Public Law 98-353, approved July 10, 1984.

CONFIRMATIONS

Executive nominations confirmed by the Senate December 4, 1985:

DEPARTMENT OF DEFENSE

Robert K. Dawson, of Virginia, to be an Assistant Secretary of the Army.

DEPARTMENT OF THE INTERIOR

Ross O. Swimmer, of Oklahoma, to be an Assistant Secretary of the Interior.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.